INTERNET

The Journals for the Senate are available at

Proof and Official Hansards for the House of Representatives,
the Senate and committee hearings are available at

For searching purposes use
http://parlinfoweb.aph.gov.au

SITTING DAYS—2004

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>10, 11, 12</td>
</tr>
<tr>
<td>March</td>
<td>1, 2, 3, 4, 8, 9, 10, 11, 22, 23, 24, 25, 29, 30, 31</td>
</tr>
<tr>
<td>April</td>
<td>1</td>
</tr>
<tr>
<td>May</td>
<td>11, 12, 13</td>
</tr>
<tr>
<td>June</td>
<td>15, 16, 17, 18, 21, 22, 23, 24</td>
</tr>
<tr>
<td>August</td>
<td>3, 4, 5, 9, 10, 11, 12, 30, 31</td>
</tr>
<tr>
<td>September</td>
<td>1, 2, 6, 7, 8, 9, 27, 28, 29, 30</td>
</tr>
<tr>
<td>October</td>
<td>5, 6, 7, 25, 26, 27, 28</td>
</tr>
<tr>
<td>November</td>
<td>22, 23, 24, 25, 29, 30</td>
</tr>
<tr>
<td>December</td>
<td>1, 2</td>
</tr>
</tbody>
</table>

RADIO BROADCASTS

Broadcasts of proceedings of the Parliament can be heard on the following Parliamentary and News Network radio stations, in the areas identified.

- **CANBERRA** 1440 AM
- **SYDNEY** 630 AM
- **NEWCASTLE** 1458 AM
- **GOSFORD** 98.1 FM
- **BRISBANE** 936 AM
- **GOLD COAST** 95.7 FM
- **MELBOURNE** 1026 AM
- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 747 AM
- **NORTHERN TASMANIA** 92.5 FM
- **DARWIN** 102.5 FM
CONTENTS

WEDNESDAY, 23 JUNE

Extension of Charitable Purpose Bill 2004—
  Second Reading ............................................................................................................ 24643
  In Committee ................................................................................................................ 24652
  Third Reading ............................................................................................................... 24661

Business—
  Rearrangement .............................................................................................................. 24661

Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004 and
Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004—
  Second Reading ............................................................................................................ 24661
  In Committee ................................................................................................................ 24672
  Third Reading ............................................................................................................... 24681

Family and Community Services and Veterans’ Affairs Legislation Amendment
  (Income Streams) Bill 2004—
  Second Reading ............................................................................................................ 24681

Matters of Public Interest—
  Human Rights ............................................................................................................... 24685
  Privilege ...................................................................................................................... 24689
  Environment ................................................................................................................ 24693
  Trade: Free Trade Agreement ....................................................................................... 24696
  World Refugee Day ....................................................................................................... 24699
  Health: Pharmaceutical Benefits Scheme .................................................................... 24701
  Environment: Great Barrier Reef ................................................................................. 24703

Questions Without Notice—
  Australian Federal Police: Investigation ....................................................................... 24703
  Health: Pharmaceutical Benefits Scheme .................................................................... 24704
  Australian Federal Police: Investigation ....................................................................... 24705
  Howard Government: Economic Policy ......................................................................... 24705
  National Security ........................................................................................................ 24707
  Howard Government: Advertising ............................................................................... 24708
  Howard Government: Advertising ............................................................................... 24709

Distinguished Visitors........................................................................................................ 24711

Questions Without Notice:
  Environment: Water Management ............................................................................... 24712
  Centrelink: Overpayments .......................................................................................... 24713
  Social Welfare: Disability Services ............................................................................. 24714
  Centrelink: Debt Recovery .......................................................................................... 24715
  Health: Pharmaceutical Benefits Scheme .................................................................... 24716

Questions Without Notice: Additional Answers—
  Foreign Affairs: Sudan ................................................................................................. 24718
  Howard Government: Advertising ............................................................................... 24719

Answers to Questions on Notice—
  Question No. 2868 ........................................................................................................ 24719

Questions Without Notice: Take Note of Answers—
  Australian Federal Police: Investigation ....................................................................... 24721
  National Security ........................................................................................................ 24721
  Howard Government: Advertising ............................................................................... 24726

Petitions—
  Education: Funding ...................................................................................................... 24727
CONTENTS—continued

Education: Funding ...................................................................................................... 24728
Indigenous Affairs: Government Policy ................................................................. 24728

Notices—
  Presentation ............................................................................................................. 24728
  Withdrawal ............................................................................................................. 24731

Sport: Drug Testing..................................................................................................... 24731

Notices—
  Presentation ............................................................................................................. 24731

Committees—
  Selection of Bills Committee—Report ................................................................. 24733

Notices—
  Postponement ........................................................................................................ 24744

Committees—
  Community Affairs References Committee—Reference ..................................... 24744
  Sydney Ports: Proposed Third Terminal ............................................................... 24745

Notices—
  Withdrawal ............................................................................................................. 24745

Committees—
  Finance and Public Administration References Committee—Reference ............ 24745
  Serpukhov-15 Incident ........................................................................................... 24746
  Foreign Affairs: Sudan ........................................................................................... 24746
  Fuel: Ethanol .......................................................................................................... 24746
  Education: University Fees ..................................................................................... 24747
  Gene Technology ..................................................................................................... 24747
  Geoscience Australia ............................................................................................... 24748

Committees—
  Foreign Affairs, Defence and Trade References Committee—Interim Report ... 24748
  Sydney Ports: Proposed Third Terminal ............................................................... 24748

Committees—
  Legal and Constitutional References Committee—Extension of Time .......... 24748
  Iraq ........................................................................................................................... 24748

Committees—
  Electoral Matters Committee—Extension of Time .............................................. 24749
  Scrutiny of Bills Committee—Report ................................................................... 24749
  Treaties Committee—Report ................................................................................. 24750

Delegation Reports—
  Parliamentary Delegation to New Caledonia and Vanuatu ............................. 24759

Committees—
  Community Affairs Legislation Committee—Additional Information .......... 24763
  Rural and Regional Affairs and Transport Legislation Committee—Additional Information ..................................................................................................................... 24763

Budget—
  Consideration by Legislation Committees—Additional Information .............. 24763

Documents—
  Auditor-General’s Reports—Report No. 55 of 2003-04 ..................................... 24764
  Research and Development Corporations ........................................................... 24764

Committees—
  Economics References Committee—Report: Government Response ............. 24765
CONTENTS—continued

Indigenous Affairs: Lands Acquisition Regulations—
  Return to Order............................................................................................................. 24777
Iraq: Treatment of Prisoners—
  Return to Order............................................................................................................. 24779
Australian Energy Market Bill 2004,
Trade Practices Amendment (Australian Energy Market) Bill 2004,
Higher Education Legislation Amendment Bill (No. 2) 2004 and
Family and Community Services and Veterans’ Affairs Legislation Amendment
(Sugar Reform) Bill 2004—
  First Reading ................................................................................................................ 24780
  Second Reading............................................................................................................ 24780
Veterans’ Entitlements (Clarke Review) Bill 2004—
  Consideration of House of Representatives Message................................................... 24784
  Third Reading.............................................................................................................. 24784
Anti-terrorism Bill 2004—
  Consideration of House of Representatives Message................................................... 24784
Family and Community Services and Veterans’ Affairs Legislation Amendment
(Income Streams) Bill 2004—
  Second Reading............................................................................................................ 24784
Committees—
  Membership................................................................................................................. 24792
Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005,
Appropriation Bill (No. 1) 2004-2005,
Appropriation Bill (No. 2) 2004-2005,
Appropriation Bill (No. 5) 2003-2004 and
Appropriation Bill (No. 6) 2003-2004—
  Second Reading............................................................................................................ 24792
Sex Discrimination Amendment (Teaching Profession) Bill 2004—
  Second Reading............................................................................................................ 24822
Adjournment—
  Christian Schools Tasmania......................................................................................... 24828
  Parliamentary Friends of Schizophrenia................................................................. 24831
  Foreign Affairs: Sudan ............................................................................................... 24833
  Marriage Legislation ................................................................................................. 24835
Documents—
  Tabling........................................................................................................................ 24838
  Tabling........................................................................................................................ 24838
The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 a.m. and read prayers.

EXTENSION OF CHARITABLE PURPOSE BILL 2004
Second Reading

Debate resumed from 22 June, on motion by Senator Abetz:
That this bill be now read a second time.

Senator SHERRY (Tasmania) (9.31 a.m.)—When we concluded last night, I was speaking on the Extension of Charitable Purpose Bill 2004. This is yet another example of the lack of commitment shown by the Howard-Costello government to early childhood learning. Limiting a charitable purpose to child-care facilities where parents leave their children and not also including cases where the parents stay with their children is a ludicrous situation. Labor will move a substantive amendment to the bill to include the provision of playgroup services as a charitable purpose. Many self-help groups currently do not meet the common law definition of a charity because they do not meet the public benefit test. This is because self-help groups are often organised and managed by people who benefit from the group. The bill changes the common law public benefit test to ensure that self-help groups meet the test. An institution will be an open and non-discriminatory self-help group, even if it is made up of and controlled by individuals who are affected by the disadvantage or discrimination. It will still be necessary for the institution to satisfy the other general criteria before the institution will be considered to be a charity.

There is some doubt under the common law whether a closed or contemplative religious order fulfils the public benefit requirement in order for it to be a charity. This is because there is no provable benefit to the community from such activities as prayer if the results of prayerful intervention are not communicated to the public. To ensure that closed or contemplative religious orders that offer prayerful intervention to the public can be treated as charities, this bill provides that such institutions do satisfy the public benefit test. Closed or contemplative religious orders are institutions that keep their observances, prayers or reflections to themselves; therefore, if the order prays for any members of that faith community who seek it, they will be treated as satisfying the public benefit requirement. Although such a closed or contemplative religious order will be taken to satisfy the public benefit test, it will still be necessary for the institution to satisfy the other general criteria before the institution will be taken to be a charity. While charitable status will help all of these sectors, in the case of community child care, what they really need is additional government funding to ensure access to quality child care for all Australian parents.

The amendments in this bill represent a very poor band-aid solution to the funding requirements of community child-care centres. Labor’s second reading amendment, which I foreshadow, refers to the Senate noting with concern that the government has failed to adequately fund long day care and, to relieve the resulting financial pressure on community based child-care centres has, as a poor substitute to proper funding, offered charitable status. As I stated earlier, this bill fails to extend the possibility of charitable status to playgroups because parents generally stay with their children and, therefore, playgroups are not providing child care. This is a ludicrous situation, given the vital role that playgroups perform, both for the early development of our children, the most precious asset in our society, and for the support
they provide to new parents. I will move an amendment in the committee stage to insert ‘and playgroup’ after ‘child care’ in the appropriate place.

Senator CHERRY (Queensland) (9.35 a.m.)—The bill we are debating this morning is the Extension of Charitable Purpose Bill 2004. This particular bill is the very weak and watered-down response of the government to the charities definition inquiry that was initiated as a result of discussions between the Democrats and the government in 1999-2000. That inquiry, which was chaired by Justice Sheppard and which included Robert Fitzgerald and David Gonski, made a comprehensive review of the entire regulation of charities in this country. It came to the conclusion that the 1602 statute of charitable purposes, that existed from the time of Queen Elizabeth I, no longer adequately reflected what was a reasonable charity for the purposes of tax law in this country. It recommended a significant updating of that definition and said that the best way of updating that definition would be to do it through statute. The reason for the need to do it through statute rather than relying on common law was that if you rely on the common law to develop a definition of charity then it is going to be a very slow process. The common law can only respond to the cases brought before it; the common law can only respond to the decisions made by the courts. As we well know, in terms of tax law, if you are prepared to take a case to the courts, you have to be prepared to outlay a significant amount of money.

Frankly, charities—being cash-strapped organisations by definition—rarely have the funds to pursue these issues through the common law. As a result, in so many areas the definition of charity, and the extension of the definition, at common law has stultified over the years. Its development has been locked into very old cases—in some cases, into cases going back 60 or 70 years. That is why the charitable sector sought very strongly through the Democrats—and I was very pleased at the time that the Treasurer agreed—to have an inquiry into the definition of charities. That inquiry came up with, as I said, a recommendation to establish a charities bill. It came up with recommendations to extend very broadly the definitions of what a charitable purpose was and of what charitable activities would be. It recommended that, for example, environment groups be recognised clearly as having a charitable purpose. It recommended that human rights organisations be recognised as having a charitable purpose. It recommended that child care and self-help groups be recognised as having a charitable purpose. It recognised that the scope of a charity in the 21st century was much broader than it was in the 19th, the 18th or the 17th centuries—which is when the case law we are relying on was established.

The report recognised a whole range of activities that should be included within the ambit of ‘charity’. The government has made much controversy over advocacy and research. The Democrats have long held the view that advocacy and research are a fundamental part of the work of a charity. I spoke on that matter in this chamber yesterday. The government’s initial response to the charities report was reasonably positive. On 22 July 2003 the government announced its intention to legislate regarding the definition of charity, as stated in the report, and released a draft bill for comment. The draft bill broadly reflected the recommendations of the inquiry but in a couple of respects went further than those recommendations. In particular, it introduced the notion of a disqualifying purpose. It defined that as:

(a) the purpose of advocating a political party or cause;
(b) the purpose of supporting a candidate for political office—
both matters picked up by the inquiry, and—
(c) the purpose of attempting to change the law or government policy ...

The inquiry expressly said that that should be allowed as a charitable purpose. The third leg in the definition caused a great deal of angst in the charitable sector. It caused a great deal of angst for the Democrats. I understand that, when the government referred the draft bill to the Board of Taxation for further inquiry, it received on that provision more than any other a whole range of submissions from community organisations. The Board of Taxation inquiry recommended that the government completely clarify that and was quite sympathetic to the submissions that were put up. Of the many dozens of submissions that the Board of Taxation inquiry received, just three recommended doing nothing, that we stick with the common law definition—those submitters being Freehills, the Catholic Church and Philanthropy Australia.

The Board of Taxation inquiry recommended in its report a range of changes to the definition of charity to clarify various matters, but overall it was supportive of the approach of the charities inquiry. The overwhelming majority of the submissions it received were supportive of the approach that the charities inquiry had been pursuing, and just three recommended an alternative approach. The government in its response announced in the budget went with the submissions of just those three against the wide-ranging submissions of all the other people who have acted on charities over the last several years. In bringing this bill forward, the government is going against the express view of the vast majority of charities and their peak bodies in this country. It is arguing a line which was dismissed by all but three of the submissions to the Board of Taxation inquiry. It is arguing a line which will maintain the stultification of the definition of charities to comply with a 17th century act. It is arguing a line that will ensure that the definition of charity does not get updated fully to reflect 21st century views. It is arguing a line that does not pick up the notion of charitable activity in research and advocacy—which was advocated in the charities definition inquiry report, not to mention by the peak bodies.

In that respect this bill is very disappointing. The government is taking a minority view from the charitable sector and putting it into a bill which has become the very sad end, almost the fag end, of what started off as very important reform in updating the definition of charity. The Democrats are very disappointed with where this inquiry has ended up, and we will continue to pressure to have the definition of charity updated.

We are supportive of two matters dealt with in this bill. It is very important that we recognise child care as having a charitable purpose. That was one of the clear recommendations of the charities definition inquiry. We will support that. It is also important that we recognise self-help groups as having a charitable purpose. It was recognised by the inquiry that self-help groups had difficulty meeting the public benefit test for charitable purpose, notwithstanding the fact that whilst providing help to a small group of the general public they are providing a general benefit to the public as a whole. We support those changes. The contemplative religious orders had difficulties meeting the public benefit test of a charity, and we support the change with respect to them as being consistent with the treatment of religious organisations.

Overall, this bill is a very pale reflection of what it could have been and what it should have been. It is a pale reflection of what the
government announced back in July 2003 it would be bringing forward. It is a very poor reflection of the recommendations of the charities inquiry to establish a reasonable basis for updating the law of charity. We as a nation continue to have one of the most backward and old-fashioned definitions of charity in the world. In the United Kingdom, where our definition actually came from, they have been consistently reviewing, updating and improving the definition of a charity through the work of the Charity Commission. Similarly, there has been work in the United States and Canada on making sure that the definition of charity is up to date. Ironically, the Islamic Republic of Pakistan has adopted the definition of charity from the charities definition inquiry report, whereas Australia is yet to do so. This highlights how this government has been reluctant to fully address the issues of charities in the tax law and to take on this area and update it.

I am also disappointed that the government is yet to respond to the other recommendations of the charities definition inquiry, which include updating the definition of public benevolent institution. The history of the public benevolent institution definition is one on which I have spoken in this chamber before. It goes back a very long way. It goes back to the Bruce-Page government of the 1920s, when in a desperate effort to save a few bucks they decided to curtail the extension of charitable purposes to a whole range of organisations by giving the full tax concessions of charities to only a very limited group of charities—that is, to those which dealt with the alleviation of poverty.

That very old-fashioned, arcane 1920s definition still holds for a public benevolent institution some 80 years later. At what stage do we recognise that the work of public benevolent institutions has moved on? The charities definition inquiry recommended a more up-to-date definition called benevolent charity which would get rid of that arcane language of the 1920s and actually develop something more relevant to the 21st century. The government is yet to respond to that recommendation. Notwithstanding the number of questions I have asked Senator Coonan in question time and the matters we have raised in debates on various bills, I am yet to know when the government will respond to the call to update the definition of public benevolent institutions. Again, the Democrats and the charitable sector are very disappointed by the government’s response.

The Democrats will be supporting this bill. However, I will move a second reading amendment which condemns the government for its decision not to go further and actually proceed with the draft charities bill. The second reading amendment also notes that the reliance on 400-year-old common law concepts will continue to cause confusion and uncertainty within the charities and not-for-profit sector. It calls on the government to legislate the definition of a charity and a benevolent charity as proposed by the Report of the inquiry into the definition of charities and related organisations.

When the government announced it was dropping the charities bill and introducing this bill as an alternative during the budget, it said that it was following the recommendations of the Board of Taxation inquiry. I have read those recommendations and can say that it is doing no such thing. The Board of Taxation inquiry quite clearly said that a charities law was workable, that it did need some tweaking, which is something I advocated to the Treasurer last year, but that it was going in the direction in which the majority of its submitters wanted it to go. It is disappointing that, at this stage, the government has sold out the charitable sector and failed to follow through with what would have been—and should have been—a very positive and pro-
gressive reform of charities law in Australia. I move:

At the end of the motion, add “but the Senate:

(a) notes that the draft Charities Bill was proposed by the Treasurer to implement a statutory definition of a charity and was a key response by the Government to the report of the inquiry into the definition of charities and related organisations;

(b) condemns the Government for the decision not to proceed with the draft Charities Bill;

(c) considers that continued reliance on 400 year old common law concepts will continue to cause confusion and uncertainty within the charities and not-for-profit sector; and

(d) calls on the Government to legislate the definition of a charity and a benevolent charity as proposed by the report of the inquiry into the definition of charities and related organisations”.

Senator JACINTA COLLINS (Victoria) (9.46 a.m.)—I rise to speak on the Extension of Charitable Purpose Bill 2004, focusing on some issues which relate to Labor amendments which will be moved in the committee stage. I want to take one step back for a moment and add to Senator Cherry’s comments about how this represents a very pale measure of what could have been achieved for the charitable sector had the government progressed the process that has taken quite some time to date. Whilst we are very pleased that the not-for-profit child-care sector will finally have an end to their confusion over their status on this issue, there are some considerable oversights in how this has been applied.

Community based child care plays a most important role in the child-care sector. It helps maintain and encourage best practice in child care. High-quality children-oriented approaches to the delivery of care and education to Australian children are important to foster. This bill does that, although unfortunately only with respect to child care in a narrow sense. In a broader sense, the government—at least at the level of rhetoric—has been committed to establishing a national agenda for early childhood. But, in this particular case, through the debate in the House of Representatives where the amendment we will address here again was rejected, it maintained a very narrow view about charitable status. It suggested this should be extended to, essentially, in its most narrow sense, child care rather than acknowledging the support and assistance that parents and families receive through such services as playgroup associations.

Given the inadequate funding—and I think Senator Sherry has already reflected on this—and support provided by the Howard government to the not-for-profit child-care sector, providing charitable status should be viewed cynically, and I think we need to monitor closely how it is applied. The refusal of the government, at this stage, to accept pleas in relation to playgroups is something that I think certainly needs to be highlighted because, amongst other things, it highlights that it is not genuine about promoting early childhood learning.

Not long back, the government allocated additional funds to playgroups. The playgroup associations at the time were saying to the government, ‘Well, that’s good; you have given us some additional funding. We certainly want to be able to grow and improve the penetration of these services across families with young children. However, the level of funding really isn’t going to facilitate that. We will not be able to grow because we attract funding—in some cases up to 80 per cent of our total funding—from sources other than the Commonwealth government and nothing has been done to improve our ability to attract this additional funding.’
This bill does not deal with the deductible gift status issue, which would be of significant benefit to playgroups and which would allow them to have various concessions—income tax exemptions, GST concessions, fringe benefits tax rebates. These would at least in part assist in dealing with their operating costs so that they can grow in the way in which the government clearly intends, as shown by the provision of some additional funding. The government seems quite contrary in its approach in relation to allowing them to have charitable gift status.

It is in this sense that we would say the bill does not acknowledge the contribution made by playgroups to young families. This was highlighted in the response by the Parliamentary Secretary to the Treasurer on this issue in the debate in the House of Representatives. Limiting charitable purpose to childcare facilities where parents leave their children and not including cases where parents actually stay with their children whilst they receive support and assistance appears completely contrary to much of the Commonwealth government’s rhetoric.

I want to spend a moment talking about what quality playgroup services do deliver. Quality playgroup is important for babies and toddlers because it provides an important forum for children to develop their health, wellbeing and education through play—including storytelling—and through support for their parents. Playgroup is also a successful support for new parents because it introduces them to information, support and services. Playgroup helps parents to help their children learn. All families should be able to access playgroup for children aged three years and under. Each playgroup accommodates between 10 and 40 children, and many more parents. Playgroups are a vital part of the early development of children’s skills, including literacy. This is particularly the case for the many young children who do not access other forms of early education and care, including child care. This is why it is critical that the government is not prepared to address this issue.

There was one point made by the Parliamentary Secretary to the Treasurer in the House of Representatives that I would like to consider. It was his contention that playgroups already have the opportunity to be considered as a charity or charitable purpose under the bill as it currently stands. The parliamentary secretary was very careful with his words. He said:

Organisations, including playgroups, which provide child-care services on a non-profit basis and meet the public benefit test can therefore already be a charity. However, other playgroups that offer nothing more than facilities for parents and children to meet and socialise would not typically be considered to be offering child-care services.

The parliamentary secretary has completely missed the point. We are not saying we want playgroups to provide child-care services; we are saying that playgroups provide a service which fills a critical gap for children who do not access child-care services, and that gap and that service should be recognised and regarded as being appropriate to attract charitable status. Playgroups that provide support for parents by parents and playgroups that provide support and learning for children by parents are not necessarily delivering child care by the strict rules of this government, and this is what needs to be addressed.

The government has been on notice with respect to this issue for quite some time. In correspondence to the playgroups association dated 25 November 2003, Mr Anthony indicated that it is not yet clear whether playgroup associations will be included under the broader definition of non-profit child care. I asked this question in the last round of budget estimates and got no clear response. The clearest response we seem to have had
from the government at this stage was in the debate in the House of Representatives. Again, it was that quite circular situation which was that, if playgroups provide child care, they can be regarded as having charitable status; but, if they do not provide child care, they cannot be regarded as having charitable status. That is simply not adequate.

The playgroups association strongly urge the government to ensure its continuing commitment to playgroups by including associations in the extension of charity to include non-profit child care. As recently as a few weeks ago they had further discussions with the minister, Larry Anthony, but had no access to Senator Coonan. I look forward to hearing Senator Coonan now address this issue publicly, to put on record that the government will not maintain a continuing commitment to playgroups, to justify in other than a very circular way why they are refusing to incorporate playgroups into the extension of charity to child care and to tell us why the government appear not to accept that playgroup services are critical to early parents and that they have a genuine national agenda to early childhood. When they strongly urged the government to ensure its continuing commitment to playgroups by incorporating associations in the extension of charity to include non-profit child care, the playgroups association noted that the Australian government listed in the budget the names of seven new bodies to obtain DGR status, including fire authorities, SES and Crime Stoppers. The playgroups association ask how these contribute to a family friendly budget which overlooks the 110,000 families participating in playgroup each week. How does it help this service grow so that it does reach all children under the age of three by enabling them to have access to that service?

That the government has not contemplated this is quite clear from the response provided by the parliamentary secretary in the House of Representatives. I think it is a sign of a government that has been in government too long that a measure as simple and clear as this could not have been addressed by the Treasurer and could not have been progressed at this time. It is completely inadequate that the Parliamentary Secretary to the Treasurer gets up in the House of Representatives and says, ‘If they don’t provide child care, they’re not in; if they provide child care, they’re in.’ That argument is very circular and completely misses the point. The point is that critical services are delivered to families with young children through playgroup associations. The government’s rhetoric to date has been about having a national agenda for early childhood but, given the test on this measure, they refuse to come to the party.

It may be true that Minister Larry Anthony got allocated some outside school hour care places and some family day care places in the budget that the government had been holding on to for far too long. But, seriously, if a measure as simple and as clear as this cannot be dealt with by the Howard government, there is obviously no genuine agenda to early childhood. If something as simple as giving tax relief to playgroup associations—not-for-profit self-help run groups—cannot be clarified other than by them needing to take action, by appeals of action and by further costs to their operating costs, we are in a very ludicrous situation.

I look forward to hearing from the minister in response to the amendment that Labor will move on this measure. I hope that her response will be far more adequate and considered than that provided by the parliamentary secretary in the House of Representatives. After this measure was rejected in the House of Representatives I said that I hoped the government would reconsider its position. I have seen no indication of that to date,
and I hope that now that this is directly and publicly before Minister Coonan she will be able to change the position promoted by the government to date and indicate that the government clearly does want to offer support to the extension of playgroup associations and their ability to deliver services to parents usually not engaged in formal child care but needing that relief as much as others, if not more.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.59 a.m.)—The Extension of Charitable Purpose Bill 2004 provides a statutory extension to the common law meaning of ‘charity’. In July 2003 the government released exposure draft legislation that provided a statutory definition of a charity. On its release, the government referred the draft to the Board of Taxation to consult with the charitable sector on the workability of the definition. The key to this is workability. The government has taken advice from the Board of Taxation that the draft legislation does not achieve the level of clarity and certainty that was intended to be brought to the charitable sector. Therefore, rather than introducing a legislative definition of a charity, the common law meaning will continue to apply. The government will, however, introduce a statutory extension to the common law meaning of a charity to include non-profit child care available to the public, self-help groups with open and non-discriminatory membership and closed or contemplative religious orders that offer prayerful intervention to the public.

This will allow those organisations which have difficulty satisfying the common law requirements to be charities for the purposes of all Commonwealth legislation. By extending the common law meaning of charity in this way, the concessions embodied in the Commonwealth legislation that are available to charities will also become available to these organisations. Such concessions principally relate to taxation and include income tax and fringe benefits tax exemptions and certain capital gains tax concessions.

Much of the second reading debate this morning has been taken up by speeches on the foreshadowed opposition amendment that playgroups be included within the definition of ‘charity’. The government has introduced a statutory extension to the common law meaning of a charity to include non-profit child care available to the public. So there can be no doubt that child-care services are charitable. This will allow those organisations which have difficulty satisfying the common law requirements to be charities, because the government clearly intends that child-care services should be regarded as charitable and supported in that way.

To be a charity, however, an organisation must have a dominant charitable purpose that is for a public benefit. The statutory extensions to the common law meaning of charity treat the provision of child-care services on a non-profit basis as a charitable purpose. Organisations that usually include playgroups, that provide child-care services on a non-profit basis and that also meet the public benefit test can also be charities. However, playgroups that confine themselves to being nothing more than facilities for parents and children to meet and socialise would not typically be considered to be offering child-care services. The distinction can be made that looking after one’s children—like looking after one’s parents—has never been regarded as charitable.

Consistent with the findings contained in the charities definition inquiry, the provision of child-care services contemplates activities that are directed towards managing the welfare of children because, in the absence of direct supervision of their parents or guardians, children—especially very small ones—
are obviously helpless or dependent in much the same way as aged and disabled people are. For example, child-care centres that provide care, protection and support of children in the absence of their parents or guardians are organisations that would ordinarily be taken to be providing child-care services of the type that would fall within the scope of the statutory extension. Accordingly, it is unnecessary to specifically include playgroups that would otherwise be covered by the general extension for child-care services. I think that point is perfectly clear.

While the bill clarifies circumstances where organisations have previously been either uncertain about or had some difficulty in satisfying the common law criteria, under the common law looking after your own children, as I have said before, is not and never has been held to be a charitable purpose. However, what may be being overlooked in the amendment that has been moved by the opposition—and the reason why the government does not support the amendment—is that it is entirely unnecessary because playgroups, even those that are not charities under this bill, are already income tax exempt under the current law.

The point is made absolutely clear in the Australian Taxation Office publication entitled *Income tax guide for non-profit organisations*, which on page 15 states:

You will be exempt from income tax if you are established for community service purposes ...

To make it perfectly clear, it goes on to say:

Examples of community service organisations include associations of playgroups...

I will table a copy of the *Income tax guide for non-profit organisations*. Income tax exemption is the key concession given to charities. Another concession given to charities is the fringe benefits tax rebate. Again, playgroup associations have the benefit of this tax break. There is a challenge here for the opposition to identify relevantly what concessions the ALP amendment would provide to playgroups that they do not already have as tax exempt entities.

The Howard government has committed unprecedented funding to help parents balance their work and family responsibilities, which gives the lie to the opposition’s accusation in this debate that the government is not serious or genuine. That is an extraordinary allegation to make, given the commitment this government has demonstrated to work and family. In our first six years in office we have spent more than 70 per cent more in real terms than the Labor Party did in their six years in office. The government recognises that playgroups are a great support to parents who choose to care for young children at home. We do not think it is at all necessary to try to force an amendment here that is redundant. This government has not only supported playgroups and families and child care in a monetary, or budgetary, sense but also ensured that they have an appropriate tax framework in order to be able to get all of the tax concessions that they need to operate.

On 5 December 2003, the government announced a significant expansion of playgroup services and funding. Funding for playgroups will increase by $11 million over the next four years to establish and support around 4,000 more mainstream playgroups and over 200 more supported and intensive support playgroups.

I want to conclude by putting on the record that the government has spent more than $8 billion on child care generally in its last six years in office—that is, from 1997-98 to 2002-03. That, on any view, is a large amount of money which demonstrates this government’s unequivocal commitment not only to children but to the care of children in all the manifest ways in which children are
appropriately cared for in our community. Certainly playgroups are to the forefront in the arrangements that the government has made.

Question agreed to.

Senator SHERRY (Tasmania) (10.09 a.m.)—I move:

At the end of the motion, add “but the Senate notes with concern that the Government has failed to adequately fund long day care and consequently relieve the financial pressure on community based child care centres, creating a poor substitute to proper funding, by offering limited charity status as an alternative.”

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator SHERRY (Tasmania) (10.10 a.m.)—I move opposition amendment (1) on sheet 4270:

(1) Clause 4, page 2 (line 9), after “child care”, insert, “and playgroup”.

Senator JACINTA COLLINS (Victoria) (10.10 a.m.)—If I can take the opportunity to respond to Senator Coonan’s comments earlier, they continue to fit in that pale measure category. Whilst Senator Coonan says that playgroups would already attract the income tax concessions and possibly the fringe benefits tax, the issue at stake here really is the GST input tax credit. I think the Minister for Revenue and Assistant Treasurer should quite clearly acknowledge that that is something that would provide assistance to playgroups associations. That is something that they clearly seek.

As the comments I made in my contribution to the second reading debate show, Playgroup Australia are very keen to clarify this particular issue. It is why they had written to Minister Anthony and it is why Minister Anthony and the playgroups associations made representations to Minister Coonan. It is disappointing that there was no response directly to the playgroups associations and that it is only today, shuffling through papers, that the minister finally accepts that there are some issues here. She seeks to argue that this measure is superfluous. The point is that the GST issues remain outstanding. Again, it is something quite clearly that the playgroups associations are seeking and that they do think would assist them with considerable extra support. Whist I acknowledged in my contribution that it is actually the deductible gift status that would add even more assistance, Playgroup Australia was overlooked in the additional groups that the government announced in the budget, and that is perhaps further reason to be cynical about the minister’s response here.

If the government had such a clear, considered view that Labor’s amendment was superfluous, why was it that the parliamentary secretary in the debate in the House of Representatives was not able to elaborate with any clarity on what Senator Coonan claims to be the case now? Even if we accept what she says with respect to income and fringe benefits tax, that still leaves one area outstanding where clarity would assist considerably. I do not know why, even if you accept the government’s argument that this is superfluous, the government are so trenchant in their opposition. Why is it so difficult to accept that, in the extension of charities and the acknowledgement of child care, not-for-profit playgroups can also be acknowledged? Why is it such a difficult ask, Minister? If it is superfluous, what is the problem?

If the Senate decides that this is a worthy cause and votes to support this amendment, the government will have to either proceed with this legislation or choose to say, ‘This isn’t as we wanted to progress this issue,’ and not proceed with this legislation.
will put the ball in your court, Minister, to justify your claim that the measure is superfluous—although, as I understand it, your advisers accept that there is the GST input credit at stake—and why you continue to maintain your opposition with respect to playgroups. Frankly, I am quite intrigued. I do not understand what could be the significant deficit for government in this measure, but perhaps you could point that out.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.14 a.m.)—I thought I had made it clear in my summing up speech that we are dealing with the definition of ‘charities’. For the past 400 years, even under any perceived extension of the definition, it has never included situations where people basically care for their own children or their own parents or situations involving a carer role where people do it in a familial sense. One would think that that would be reasonably clear—that this does not ordinarily come within the definition of a charity. Under the extension that the government has proposed, where all of the factors are met it may come within the definition of a child-care group, but to regard all playgroups as charities would not be consistent with the way in which the charities law has developed.

However, I suspect that because of the way the debate unfolded in the House of Representatives it may not have been clear that playgroups are clearly regarded as tax exempt. It then really comes down to: what else would one want to achieve in the tax treatment of playgroups that they do not already have? That is the sense in which I have said it is clearly unnecessary and redundant. The only tax concessions that would be provided under the opposition amendment that do not currently exist are some limited GST concessions—and there is another small aspect of the tax law that would not be available. But, in respect of the GST concessions that have been particularly identified, while it is true that charities have access to a range of GST concessions, many of these are also available to non-profit organisations. They are not mutually exclusive. Therefore, on my advice, there would only be a very small number of GST concessions available to charities that are not currently available to playgroups. The challenge for the opposition is to say which ones they are. I cannot see what GST concessions available to charities and not available to playgroups would be relevant to this particular matter.

Senator JACINTA COLLINS (Victoria) (10.17 a.m.)—I think I need to go back to the comments that I made in my second reading contribution, because it does not seem that the minister has understood the role of playgroups provided through Playgroup Australia. Perhaps that is because the Minister for Children and Youth Affairs has not adequately explained this to his colleague. There are two really critical issues here: do playgroups associations have a charitable purpose and do they provide a public benefit? I think the answer to both of those questions is clearly yes. If you want to go back over four years of precedent, so to speak, that is one thing but, when I sit here and listen to the minister describe playgroups as essentially just being parents providing care in a familial sense, if anything she makes me quite irate because it clears—

Senator Coonan—That is not what I said. I said that it was possible that that is one way. Do not misrepresent what I said.

Senator JACINTA COLLINS—Unfortunately, Minister, that is not the way playgroups under the umbrella of playgroups associations operate. It is not the way Playgroup Australia operate critical early childhood development experiences for children through their associations. Yes, it may be that parents are providing care in that environ-
ment but it is in a much broader environment than just familial care. You can check the *Hansard*, Minister, but you will see that you referred to playgroups as involving familial care.

**Senator Coonan**—I said those that do. Do you misrepresent me?

**Senator Jacinta Collins**—They do not. That is the point: they do not. If you refer back to those playgroups that are associated with Playgroup Australia Inc.—this is the organisation that is seeking this recognition—you will understand that playgroups under that umbrella are not about parental or familial care. They are about education and care and about facilitating an environment that will develop that education and care. If we go back to the role of playgroups, we understand that quality playgroups—and I am quite happy to stress quality playgroups, which are what Playgroup Australia seek to ensure exist—are very important for babies and toddlers and critically important for those that may not be accessing other formal child care.

We hear from this government time and time again about the number of children that are not in formal child care. This is an opportunity for this government to be serious about those children that are not presently available to playgroups. In acknowledging that, you must understand that this measure is not superfluous. You suggest that this measure is superfluous even though we now understand that, apart from income tax and fringe benefits tax, there are other measures that would assist the operating costs of playgroups. Again, we would like to see the government proceed in relation to gift status as well.

I do understand the frustrations of Playgroup Australia. They say that they cannot comprehend why a family friendly budget cannot give deductible gift status to playgroups, and it is beyond me too. If you wanted these services to grow, if you wanted to deliver to all Australian children under the age of three services that would assist their families, why on earth would you continue trenchant opposition to a measure as simple and straightforward as this? There is no justification for it. For the minister to get up and say the difference is historically whether or not it is the parents themselves providing the care is just an enormous cop-out.

**Senator Coonan** (New South Wales—Minister for Revenue and Assistant Treas-
urer) (10.22 a.m.)—The first comment I would make is that, with discussion in this chamber, I do not see any purpose gained by any sort of pejorative presentation, nor do I see any point in misrepresenting what I said in my speech in the second reading debate. It is certainly not what I am used to and I do not appreciate it. I take great issue with it.

What we are discussing here is a broader concept than that of Playgroup Australia. What I said in my summing up speech is that there may very well be playgroups that carry out a charitable purpose for a public benefit and—guess what—if they do they are already included within the definition that this government has just put forward. If that is the case with Playgroup Australia, they are already included in the definition. So there is not much point in railing against the fact that they are not included. If they have a charitable purpose and a public benefit, that seems to me to be the clear position.

What I said was that there can be playgroups—and I do not say this pejoratively, but for the purpose of looking at the definition and whether somebody is carrying out a charitable purpose—that are nothing more than some people who meet on an organised basis to supervise their children for a short period during a coffee morning. There is nothing wrong with that. I think that is a very useful thing. I think it is very good to socialise children. Early childhood development is critical, there is no doubt about that, but not every activity that parents conduct with their children has a charitable purpose or a public benefit. It is something that people do.

I do think that there is a distinction across the spectrum of the way in which what are loosely called ‘playgroups’ exist. I have to say that the opposition amendment certainly did not nominate or characterise any particular group; it just talked about playgroups. I think it is quite disingenuous of Senator Collins to try to roll every playgroup that has ever existed into the whole concept of something that is carried on for the public benefit and for a charitable purpose.

The actual definition in the opposition amendment just says ‘a playgroup’. That might be arguable. Is it for playgroups or is it for associations—which is it? It certainly does not seem to be clear from the way in which the amendment has been framed. So the first point is that a lot of playgroups are already included. Those which may not be included are certainly tax exempt. The challenge for Senator Collins, and she has failed to meet this challenge, is to say which. Senator Collins has completely failed to rise to this challenge and to identify which GST concessions available to charities that are not currently available to playgroups are relevant, because most of them are available to both.

That is a very real issue here. We are dancing on the head of a pin, Senator Collins. We are not arguing about the good purpose of playgroups; nobody is cavilling about that. We are not arguing about funding for playgroups, because we have already given them another $11 million, so that does not get you very far in your criticism of this government’s response on that issue. What I am trying to identify from the opposition is: can you precisely say what it is that is not covered by the extension? That is No. 1. The tax-exempt status is No. 2. No. 3 is the fact that GST concessions are also available to tax-exempt entities and charities.

I have not heard one word about what is really worrying the opposition. What GST concessions are worrying the opposition so that they are prepared, somehow or other, to try to force every playgroup into the definition of a charity? It just is not a sensible way to proceed, if I may say so. If there were any suggestion that playgroups would be disad-
vantaged, I would be very interested to hear it. So far, I have heard a lot of rhetoric but I have not heard any facts.

Senator CHERRY (Queensland) (10.28 a.m.)—I want to ask the minister a question about these provisions. We are discussing playgroups, but we are also discussing the substantive bill, which concerns the issue of the tax concessions for child-care groups generally. I would be interested to know why, when the minister keeps indicating that the proposed inclusion of playgroups in the definition of a charity will make little difference to their status, we are bothering with child-care groups generally.

I ask the minister: could she explain in some detail exactly what the changes to tax arrangements are for child-care groups generally as a result of the passage of this bill. My understanding is that at the moment in terms of GST, as a non-profit organisation, a child-care group does have an entitlement to the higher threshold for non-registration for GST but it does not have access to the input tax credits as a full charitable organisation. I also understand that as a non-profit organisation it would be exempt from income tax, so income tax is not really affected by this bill, but I am a little bit unclear, because I have not read my briefing papers for some years on this matter, about the impact on fringe benefits tax. I would be interested in exactly what the impact of this bill would be generally on FBT and GST.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.29 a.m.)—Thank you, Senator Cherry; I am very happy to clarify that for you. Child care will get all concessions because child-care groups are now regarded as charities under the extended definition. Some playgroups that may not be in that kind of organisation and are, as I said earlier, more in the category of a socialising group would not typically be considered as offering child-care services. The critical issue will be whether child-care services are offered. There is no doubt that some playgroups clearly do and would get concessions.

The following concessions are also available to non-profit bodies, including charities and a couple of other organisations. They get a registration turnover threshold of $100,000; supplies made by school tuckshops and canteens can be input taxed; and charities, gift deductible entities and other non-profit entities can choose to treat some or all separately identifiable branches or activities as separate entities for GST. What I am really trying to understand here—and I genuinely mean this, because it is very difficult to see it—is how a small playgroup can be seriously disadvantaged by any of the tax treatment, because they are already tax exempt. I am very interested to know, quite genuinely, what GST treatment would disadvantage them. I am genuinely asking that question.

Senator CHERRY (Queensland) (10.31 a.m.)—The minister half answered my question. I am sorry to tie up the chamber on this point but I am still unclear as to what the benefits of this bill will be for child-care providers. The minister gave us some good information on the definition of a child-care provider but not on actually what the benefits would be. As I recall, child care itself is zero rated under the GST—I might be wrong about that but that is my recollection. I would be interested to know what the benefit of this bill will be for child care generally in terms of shifting from a non-profit entity to a charitable entity.
As the minister would be aware, the area of non-profits and charities is an incredibly complicated area of tax law because you have the smallest category of non-profit, the broader category of charities, the broader category of gift deductible entities and then the nirvana of the public benevolent institution. The minister would be aware that the Democrats have pushed for many years to get this whole area clarified and improved. At this time I would like to understand quite clearly for our listeners out in radio land exactly what the difference between a charity and a non-profit is for the purposes of tax law.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.33 a.m.)—I think that is a fair point, Senator Cherry. Often there is very little benefit, quite frankly, to organisations that get charitable status, but I can give you some indication. They get, for instance, a choice to account on a cash basis regardless of annual turnover. For most small organisations that is of little benefit. They get GST-free treatment of supplies for nominal consideration. They get GST-free treatment of supplies of donated second-hand goods provided they retain their original character at the time they were donated to the charity. They get GST-free treatment of raffles and bingo and the choice to treat mainly one-off fundraising events as input taxed. They have the ability to claim input tax credits when reimbursing volunteers for expenses incurred that relate to activities as a volunteer of the entity.

The following concessions are also available to non-profit bodies, including charities and gift deductible entities: a registration turnover threshold for non-profit bodies of $100,000; supplies can be input taxed, as I said a little earlier; and charities, gift deductible entities and certain other non-profit entities can choose to treat some or all separately identifiable branches or activities as separate entities for GST purposes. All of this really implies some scale to the operations which, as I implied in my earlier comments, makes it very difficult to see a small playgroup getting any benefit or any disadvantage, because they are already tax exempt. That is what they need to be—there is no doubt about that.

The associated playgroups which form part of this discussion are in a very different category. I would have thought that there would not be much doubt that they are already included in the definition because they clearly provide a public benefit. They clearly have a charitable purpose. As I understand it, the group being spoken of also provides advice to other people as to how to set up groups. They are certainly a substantial organisation as playgroups go. There is no doubt in my view that they would come within the definition that is being proposed in this bill.

Senator JACINTA COLLINS (Victoria) (10.36 a.m.)—I thank Senator Coonan for the answer she gave Senator Cherry, because in part it dealt with the issue that she challenged me to respond on. Very kindly Senator Cherry put that onus back on the minister, where I think it is more relevant. Yes, Minister, there is an issue of scale associated with the playgroups association. As you went through the series of benefits that would be available if it was clarified that they were eligible for charitable status, it became pretty clear—and it is even on the record now—why they seek to clear up that status. Before the minister retreats to the umbrage she was referring to earlier, let me go back to the point we have raised. Playgroup Australia have been seeking to engage with this government on this issue for quite some time. This is now the first opportunity they have had publicly to get a response from Senator Coonan. They have sought to meet with
Senator Coonan with no success, and for her to take the sort of umbrage that she has with me raising these issues now I personally find quite astounding.

Senator Coonan—I just took umbrage at being misrepresented.

Senator JACINTA COLLINS—We can both check the Hansard on that point but until that is available to us I do not think we can resolve that ‘hurt’, as the minister seems to have characterised it. The point is that Minister Anthony has indicated, in correspondence dated 25 November 2003, that it is not yet clear whether playgroup associations will be included under the broader definition of non-profit child care. Playgroup associations have clearly been told by the minister that it is not clear, and therefore it is not surprising that we are now seeking in the Senate to make it clear.

For the life of me I cannot understand why, under those circumstances, the government is not able to deal with this issue. It was raised in the debate in the House of Representatives. If the government had difficulties with how the amendment dealt with the playgroup associations issue then that avenue was available to address it—but no action was taken. The amendment that we have moved is framed in a way that is consistent with how child care is dealt with in this bill. The definition of ‘child-care services’ and the definition of ‘playgroups’ can be dealt with through regulation. But this bill does not presently clarify that playgroups—in whatever sense or on whatever scale—can, under at least some circumstances, attract charitable status. That is what this amendment seeks to progress. I am astounded that it has taken this long and it has come this far without the government acting on this issue.

Senator CHERRY (Queensland) (10.39 a.m.)—I note for the record that the Democrats are inclined to support this amendment at this stage, but that does not rule out the government further clarifying this matter. At this stage we are inclined to support this amendment because we recognise, given the submissions from Playgroup Australia, that there is a concern about the edge of what child care means.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.39 a.m.)—The critical question—and it may not be one that can be definitively answered here—which would be relevant to whether any playgroup, and I mean ‘any’ playgroup, comes within the definition is whether they provide child care. That seems to be the pivotal issue, rather than who provides it. I think we are getting somewhat confused about the ultimate objective, which is care of children. If it is provided as child care, that is what is really intended by this definition for the reason that nobody disputes that child care provides a public benefit and, indeed, a public purpose or a charitable purpose. When you get to who provides it, if it is provided in a certain way it is not a charity—under any circumstances it is not a charity.

The government’s problem with the amendment is not so much the sentiment behind it—I think we can get around that—but the fact that there is a failure to distinguish that just the mere carrying on of a playgroup is in itself a charitable purpose. I do not think that can be the case; it never has been. If the amendment were to be refined in some way so that it captured that charitable purpose is what is being sought to be provided—that is, for a public benefit et cetera—we may well be able to consider that, because then all we would be doing would be refining the circumstances under which a group could be considered to be providing child care. But the way the amendment currently sits poses some problems because that would mean that all playgroups, irrespective
of who and how they were provided, would be child care for the purposes of a charity. With respect, I do not think that that could be consistent with either the concept of a charity or the way in which the law has interpreted and understood charitable purposes to operate for a large number of years, including right up to the present. It is not a distinction that it is unfair to make. It is certainly one that would play havoc with the normal concepts of how a charitable purpose is delivered and how a public benefit is interpreted.

Senator JACINTA COLLINS (Victoria) (10.42 a.m.)—Thank you, Senator Cherry, for your comments earlier. I would like to respond very briefly to the minister’s comments. Yes, in part the difficulty is the definition of ‘child care’. The playgroup associations are concerned that a very narrow definition of child care will be applied and that the additional services and support usually offered through playgroup associations will not be recognised as child care. That is the concern. That there is a charitable purpose and a public benefit from those types of services is, I think, beyond question—the Labor Party certainly thinks it is beyond question—and would be very critical to a genuine national agenda for early childhood. However, the definition of child care that would be applied in this measure is still unclear. If the minister can clarify that the definition of child care would clearly cover the playgroups operated by playgroup associations, that would be of some benefit. In the absence of that, the only point I make about the minister’s concerns that other playgroups might suddenly latch on to these measures is that that argument is a bit circular and a bit bizarre. As she has pointed out, it is only organisations with some scale that will benefit from having charitable status. Certainly those little playgroups which are just mothers getting together to have a cup of coffee will not get a huge benefit from these measures. So I do not see what the issue is in relation to incorporating playgroups under the definition in this bill, because those groups that the minister is worried about are not going to utilise them or benefit from them anyway. She commented herself about the scale needed for any organisation to benefit from what this measure would deliver.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.44 a.m.)—I think we are narrowing down appropriately the scale of our disagreement. We are clearly dancing on the head of a pin here. We are not identifying which child-care groups are intended to be included by this amendment; what we are doing is saying, ‘Rather than try to be clear about the definition of playgroups that provide child-care services so that no-one is any doubt, let’s put all playgroups in.’ That would be a very seriously damaging precedent for the way in which charities work and it certainly would not even be necessary. Little playgroups do not need this. They may well need deductible gift recipient status, whereby they would get much more benefit—and that is something that I have under consideration—but they do not need to be charities. As Senator Collins has conceded, they probably do not need to be because they will not need to access the provisions and they are already tax exempt.

We are going round in circles, but I would be interested to learn from Senator Collins, just so that I am clear about it, how she proposes this definition would work. If the Senate were disposed to agree to Labor’s amendment—specifically, if Senator Cherry were to agree to the amendment—the definition would be this: ‘Without limiting what constitutes a charitable purpose, charitable purpose includes the provision of child care and playgroup services.’ I do not know what ‘playgroup services’ means—whether it means playgroups, advice services or quite
what. We do not have any detail about what playgroup services are or how they would operate, so there is an element of imprecision in the way ‘playgroup’ is inserted. I would be grateful for some elaboration as to what a playgroup service is.

Senator JACINTA COLLINS (Victoria) (10.46 a.m.)—With respect to the minister, there is no less imprecision about what a playgroup service is than there is about what a child-care service is as this bill presently stands. But I will take the minister back to my comments at the second reading stage, if she likes, about the nature of services provided by quality playgroups, generally those organised through Playgroup Australia Inc. and the state playgroup associations. A quality playgroup provides an important forum for children to develop their health, well-being and education through play, including things such as storytelling. It is also a successful support for new parents. It introduces them to information, support and services and helps them understand how to help their children learn. As much of this information is, we are discovering over time, not being passed down in a generational sense as it might once have been, this is becoming more and more critical to early childhood development.

You have families now that do not have access to the broader family networks that they might once have had. They do not have access to information about good parenting and good childhood development, and Playgroup Australia and bodies like the Playgroup Association of Victoria are becoming quite critical in ensuring that those services and that support are available to families. There are enormous problems in facilitating the growth of these playgroup services, particularly in new suburbs. Access to some of these measures will assist the playgroup associations. But we get back to the point that we are not here to argue over who or what scale of organisation runs child care, so I really do not understand why the government is having such difficulty with the concept of playgroups. If the minister wanted to come forward and clearly define ‘child care’ in a way which encompasses playgroups, that would be good. But, in the absence of the bill doing that, we say it should include ‘playgroup’ as well so that it is quite clear.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.49 a.m.)—I think it is relevant to point out that the government has had a process that has involved a long period of consultation conducted by the Board of Taxation. During that consultation period there has been extensive discussion as to the meaning of child care, as discussed. Throughout all of the submissions—I actually asked those advising me to have a look—there has been no mention of playgroups. Right throughout all of the submissions that have been made in respect of this matter, playgroups per se have not rated a mention. They certainly have not been included in the submissions as far as I can find.

Insofar as playgroups provide child care, which has been very clearly talked about here, my own perspective is that—and I mentioned this earlier, before Senator Collins raised it—playgroup associations providing advice to people as to how to set up child care and carrying out various other activities would be brought within the existing definition, because child care is clearly understood as a charitable purpose and a public benefit. But I do not think it is stretching the realms of credibility to say that some playgroups do not do this. Some playgroups do not provide this public benefit; some do and some do not. To assume that they all come within the definition of charity certainly goes well beyond what this inquiry looked at. The government have had a clear intention to make sure that child care that is provided by way of a char-
ity or a public benefit will qualify, and to put it beyond doubt. That is why we have sought to extend the definition. The problem is that extending the definition out that far will get into activities that could not, on any view, be regarded as charitable, public benefit or having any of the other indicia of a charity.

Even if I am wrong about that, and I do not think I am, we have got a situation where nobody has been able to identify how any playgroup that is tax exempt anyway is disadvantaged by not being a charity. They may well benefit much more from deductible gift recipient status because that obviously then provides them with benefits in the form of fundraising and other ways, so that would probably be a much more valuable thing for playgroups to get. As I said, I have that under consideration. I do think that we are muddying the waters significantly in assuming that all playgroups should be defined and deemed to have a charitable purpose. Clearly, some do and some would not.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.53 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.54 a.m.)—I move:

That government business order of the day no. 2 (Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003), be postponed till a later hour.

Question agreed to.

SUPERANNUATION LAWS AMENDMENT (2004 MEASURES No. 1) BILL 2004

SUPERANNUATION LAWS AMENDMENT (2004 MEASURES No. 2) BILL 2004

Second Reading

Debate resumed from 15 June, on motion by Senator Troeth:

That these bills be now read a second time.

Senator SHERRY (Tasmania) (10.54 a.m.)—We are dealing with two superannuation laws amendment bills, the Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004 and the Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004, together. Firstly, I will go to the first of the bills. This legislation extends the existing superannuation low-income earners co-contribution introduced in 2003 by significantly altering the definition of a low-income earner. It deals with eligibility in terms of the minimum criteria that are applied to persons on a very low income.

The current law for eligibility for a contribution requires that an individual be in receipt of or entitled to employer superannuation support in the form of a superannuation guarantee contribution. An employee does not receive a superannuation guarantee contribution if they are earning less than $450 per month—just over $5,000 per year—and are less than 18 years of age and working part-time. This superannuation No. 1 bill proposes to change eligibility in respect of a new definition where an individual will no longer require employer superannuation support. That is, the employee will no longer need to be entitled to superannuation guarantee contributions. I understand this will apply
retrospectively from 1 July and it will require only that 10 per cent of the total income of an individual in any income year is earned from employment. So we are dealing here with a group of employees with very low levels of income for eligibility for the low-income earners co-contribution. There is another measure, in the Superannuation Budget Measures Bill, to extend the low-income earners co-contribution in terms of the eligibility up the scale, but that is not the issue here today.

The government states that its justification for this change is to allow a greater number of low-income earners, unspecified, to access the co-contribution scheme. The cut-off figure is $5,400 per year. This is the government’s rhetoric and claim: this is to benefit low-income earners. I would also make the point that it is not law yet, even though it is retrospectively applied to 1 July. We have examined the tax office web site. In fact, I know of people who have called the tax office to inquire. One of the concerns we have is that we cannot see, given that it is not currently law and given the understandably conservative advice that the tax office is giving on this matter, how the estimated take-up rate would be significant for this financial year. The costings of the proposal indicate, I think, that $40 million or $45 million would apply to this year—it is paid in the next financial year—and then it would increase slightly in the following year. I would not have expected a take-up rate, based on the costings provided, to be anywhere near what is indicated.

The matter was referred to the Senate Economics Legislation Committee. I am not critical of Treasury officers, because they respond to their political masters, but we received no information on what the basis of the costings is. I hope that today the minister can provide us with an estimate of the take-up rate of this measure for this year on which the costings are based. I know that the Treasury would have that information—they have admitted that—but they were not willing to provide it at the committee hearing. I am critical of the minister—probably the Treasurer, Mr Costello, in this case—for not providing information on which to assess legislation prior to getting it into the chamber.

This is not openness; this is in fact keeping closed information that we know exists that is necessary for considering the legislation. So I am critical to that extent and I think it indicates a level of arrogance and contempt for the committee process to refer bills off and for the committee to then not receive any information—which is a reasonable thing to expect at a committee hearing on the bills. It just prolongs the debate in this chamber because we will have to pose the questions that we posed at the Economics Legislation Committee here in the chamber, and that wastes time. The matters we will be asking about in the Committee of the Whole should have been dealt with in the legislation committee consideration of this bill and the other two bills.

The other concern we have is the claim that it benefits low-income earners. On the face of it, that is true. But I pose a fundamental question: how many low-income earners earning less than $5,400 a year can find up to $1,000 after tax to put into super in order to receive the $1,000 government low-income earners co-contribution? How many can do that? I do not think there would be very many. What we will have is the parents or the spouses of this group of people who are on very low incomes giving money to their low-income children or partners. That is what we believe the behavioural response will be. I would add in support of my claim that we should not forget that these people on very low levels of income—less than $5,400 a year—are not getting a tax cut from this government. People earning less than
$52,000 a year get no tax cut as a result of the budget. They get no increase in their discretionary income by which they could have made the additional contribution of up to $1,000 a year. We do know that people earning more than $52,000 a year—the partners or parents—are getting a tax cut. They are on a higher level of income; therefore, they are much more likely to be the indirect beneficiary by giving the money to their partner or child.

The Labor Party questions the fairness of the way in which this measure is targeted. We will get some indication of exactly who is to benefit later this year because the current co-contribution legislation requires the tax office to report on the joint incomes of people where there is a low-income earner who is contributing money to super. I believe that will confirm the claim I have just made—that it is primarily, in terms of the quantum of the co-contribution, people earning more than $52,000 who will give money to their partner or children who are on a much lower income. We question the fairness of this. We question the way in which this is being targeted. Is this the best way to spend moneys in respect of superannuation? The Labor Party has argued for an across-the-board tax cut on the contributions tax; that would benefit far more people. Of course it would not be as much money because it would benefit a lot more people. That is the point I make about this. Therefore the Labor Party states today that it is not prepared to support this, based on the lack of evidence and the prima facie lack of fairness that it claims this measure exhibits.

I will be moving a second reading amendment to the Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004, as well as some amendments at the committee stage. The bill deals with a range of measures, including the removal of the requirement for actuarial certificates and the setting of a new work test for deductibility of contributions made by or on behalf of persons under 18. That is being introduced, as I understand it, to stop rorting in respect of the measure I have just talked about, because otherwise you would have higher income earners tipping money into super for kids under the age of 18 for tax minimisation purposes. That is an interesting contrast to the measure I have just commented on. The bill changes the time limit in which a retirement savings account must be rolled over, standardises the superannuation guarantee earnings base to ordinary time earnings and makes technical amendments that relate to the cancellation of a registrable superannuation licence.

It is the fourth matter that I want to make some comment on: standardising the superannuation guarantee earnings base to ordinary time earnings. This is the measure that we propose to amend. The current superannuation guarantee provides for a number of exemptions to some employers—it is a limited number; we do not know the precise number—and it has provided an exemption in respect of the base for the calculation of the nine per cent superannuation guarantee. It has done that for about 12 or 13 years; it goes back to August 1991 or it might have been in 1992. In other words, the employers who have benefited from this exemption have been able to pay less than the nine per cent compulsory super guarantee, bearing in mind that it has been phased up. They have been able to pay less than the legal entitlement that other employers are required to pay for the last 12 or 13 years. So some employers—a relatively small number compared with other employers—have been getting away with paying less in superannuation guarantee contributions to their employees.

The government has said the exemption must end by 2010. The explanatory memorandum estimates—and I do accept that it is
difficult to quantify this, so I am not critical—that perhaps five per cent of employees are disadvantaged. I would also indicate that some employers are disadvantaged because they are paying the full nine per cent SG and others in the same industry are not paying the full nine per cent SG. So it is not just the employees who have been disadvantaged; it is the employers who are in a competitive position in the same industry. The exemption has existed for 11 years. There may have been a good reason for this at that time. The government has said it has to end. Again, the explanatory memorandum is not clear on the practical application of the process to effectively phase out this exemption by 2010. There will apparently be some negotiations at the workplace level. This is very difficult to enforce and monitor, and I accept the difficulties of enforcement and monitoring in this area.

The Labor Party believe that these employees are being disadvantaged. I understand there are employees in the mining industry who are being disadvantaged. I understand there are some nurses in Queensland whose shift payments have not been included in their superannuation guarantee base, when the shift payments of the vast majority of other employees are included. There are some other employees who are being disadvantaged too. It is very difficult. There are no examples in the EM, but we do have at least some data on who is being disadvantaged. Labor’s contention is that this exemption should end on 1 July 2005. Our second reading amendment, if it is agreed to, will reflect that. If there are employers who believe that 11 years of advantage is not good enough, who want another five or six years of this advantage, then they can apply to the state or federal industrial commissions and argue incapacity to pay. We believe this exemption should end on 1 July 2005.

The difficulty with the government’s proposal, from reading the EM, is that it is dependent on the employees and/or the union and the employer sitting down and negotiating this by the year 2010. If the employer wants to keep the advantage of paying their employees less than the nine per cent SG base, they will simply refuse and wait until 2010. They will just keep the cost advantage for another five or six years. There is really no process to ensure that what the government hopes will occur, that this will be phased out or phased down in some way, will occur by 2010. We think this is unreasonable. Another five to six years of inferior levels of payment to employees is unfair. We will move a second reading amendment to that effect and amendments at the committee stage to change the law. Those are the only amendments the Labor Party intends to move.

Let me conclude my remarks by coming back to the co-contribution legislation. As I have mentioned, there is to be a retrospective change to the $450 per month minimum qualification, and I have outlined that. I want to highlight, on this issue of the low-income earners co-contribution, the massive advertising and propaganda campaign this government has been engaged in—inappropriately, which is why I call it a propaganda campaign. So far on this co-contribution measure, which we are considering in part today, there has been almost $8 million in government paid advertising spent for the political re-election purposes of this government—$8 million on this one measure. This government has spent a total of $122.8 million on advertising campaigns in the last few months. Surprise, surprise: we are a few months from an election. Over $100 million has been spent. It is completely outrageous.

The Liberal government is now a bigger advertiser than Coca-Cola, McDonald’s or Telstra. Massive amounts of public funds
have been spent on advertising, including on advertising the co-contribution measure we are debating today. On advertising More Help for Families, $21 million has been spent; on keeping the system fairer, $17 million; on the super co-contribution, almost $8 million so far and another $8 million probably over the next four to eight weeks; on Medicare, $15.7 million; on the elimination of violence against women campaign, $6.7 million; on regional telecommunications, $5.9 million; on the illicit drugs campaign, $5 million; on New Apprenticeships, $4.8 million; on TravelSmart, $4.1 million; on higher education reforms, $4 million; on AusLink, $3 million; on citizenship, $2 million; and on the antismoking campaign, $1.5 million. A total of $122.8 million in spending on propaganda campaigns has been racked up by this government for its re-election purposes. That is a massive amount of money. Included in that list is $8 million already spent on the super co-contribution and another $8 million to be spent.

Senator Cherry has come into the chamber. I have to thank him for at least one aspect of that shoddy deal the Democrats did with the government on so-called super choice. The Democrats insisted that, once the super choice bill passed—and it passed last night—the government not spend $16 million on advertising it before the election. The government had another $16 million ready to go, on top of the $123 million I have just outlined, on so-called super choice. We would have been subjected to a further outrageous campaign expenditure of $16 million plus between the passage of that bill last night and the election. We know the government had it ready. They had the ads planned.

Senator Coonan—You don’t know what you’re talking about, Nick! You’re talking through your hat.

Senator Sherry—It is absolutely outrageous, Senator Coonan. Fortunately—and this is the only aspect of that deal that is to Senator Cherry’s credit—that money will not be spent before the election; it will be spent from January next year. Thank goodness for that. If it had, that list would have topped $138 million or $139 million. That is a staggering amount of money. In the context of the changes to the co-contribution scheme that I have referred to today, I want to draw to the attention of the public—and unfortunately there are not a lot of members of the public listening—the massive amounts of taxpayers’ money being spent to re-elect this government. Almost $123 million has been spent. That is a staggering amount of money. That could help a lot of people in aged care and in child care; it could help a lot of schools. You could do a lot with all this advertising money, other than promote the government, by spending it directly on people who need help. You could do that rather than help the government’s re-election chances through public funding. I move:

At the end of the motion add “but the Senate:

(a) expresses its support for the introduction of a simplified superannuation guarantee base definition from 1 July 2005, instead of 1 July 2010, with employers being given the right to argue before a Federal or state industrial commission for the simplified superannuation guarantee base definition to be phased in because of their incapacity to pay; and

(b) opposes any use of this legislation to remove any superannuation guarantee base that is more generous than the ordinary times earnings”.

Senator Cherry (Queensland) (11.14 a.m.)—We are debating today the Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004 and the Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004. These bills deal with a wide range
of issues, and I propose to speak briefly on both these bills. The first bill, the Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004, is predominantly about the low-income earners government co-contribution. The Senate would be aware that this particular measure passed through the Senate last year after negotiations between the government and the Democrats which established a doubling of the initial funding for the government co-contribution for low-income earners. As a result of those discussions—and I should acknowledge the very positive role that Senator Coonan played in that discussion—the funding for the low-income earners co-contribution for the next four years was increased from $460-odd million to $920-odd million.

The measures outlined in this bill will increase the funding for the co-contribution by a further $200 million over the next four years. From that point of view, I think it highlights that the government co-contribution measure we put in place last year was a measure worth doing—and one which is worth building on over the course of the next couple of years. I should also note that, in the 2004 budget, the government announced further extensions to the government co-contribution totalling around $790 million a year, and we will be debating that bill later in the week. Certainly at the time of the government co-contribution legislation, the Democrats supported amendments moved by the ALP to require very detailed reporting on the collection of the government co-contribution by income level over the course of the next period.

I note that this legislation will include a restriction that at least 10 per cent of the total income of the person must have been received as an employee. I think we could have a good argument about whether 10 per cent is a reasonable figure. I would prefer to have seen a higher figure in this legislation, but certainly 10 per cent is at least making it clear that there must be a link between earning and receiving the co-contribution. That is something which is reasonable. If it does end up that this provision is rorted, as the ALP suspects, then I think we will be revisiting that 10 per cent in future years. But at this stage, in terms of simplicity and getting the co-contribution up and running, I think it is reasonable to ensure that we maintain that link between earning and the co-contribution. From that point of view, the Democrats will be supporting the legislation.

This particular measure seeks to extend the government co-contribution down the scale rather than up—to very low-income earners, that is, people earning less than $450 a month who currently are not eligible for the superannuation guarantee and employer sponsored superannuation support. The government argues in its EM that this change will mean that the greater number of individuals, for example, who earn less than $450 per month or are part-time workers under 18 will be able to qualify for the government co-contribution. The Democrats do welcome that initiative.

The ALP is concerned that this particular measure will result in a range of people who are not necessarily workers getting access to the government co-contribution and that these people will be subsidised by wealthier partners or spouses. That is a concern which I think is valid, and I think it is one we need to monitor over time. At the time of the government co-contribution legislation, the Democrats supported amendments moved by the ALP to require very detailed reporting on the collection of the government co-contribution by income level over the course of the next period.

I note that this legislation will include a restriction that at least 10 per cent of the total income of the person must have been received as an employee. I think we could have a good argument about whether 10 per cent is a reasonable figure. I would prefer to have seen a higher figure in this legislation, but certainly 10 per cent is at least making it clear that there must be a link between earning and receiving the co-contribution. That is something which is reasonable. If it does end up that this provision is rorted, as the ALP suspects, then I think we will be revisiting that 10 per cent in future years. But at this stage, in terms of simplicity and getting the co-contribution up and running, I think it is reasonable to ensure that we maintain that link between earning and the co-contribution. From that point of view, the Democrats will be supporting the legislation.
We think it is reasonable that it is extended to very low-income earners—those people currently ineligible for the superannuation guarantee who earn less than $450 a month—although it is valid to argue that that group may not have the financial resources to make a co-contribution. From that point of view, it is something which we will be keeping a close eye on. I am concerned that the 10 per cent requirement may result in people claiming the co-contribution who it was not intended to be targeted at, but, as I said, that is a matter we will need to look at over time in terms of the monitoring we have already put in place for the co-contribution.

The second bill, the Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004, contains a range of measures about clarifying and improving superannuation legislation. The first schedule amends the tax acts to remove the requirement for superannuation funds to obtain an actuary certificate in order to qualify for exemption from tax on income derived by assets supporting certain pension liabilities or an exemption of a proportion of income attributable to certain pension liabilities. The bill also amends the under-18 superannuation contribution deduction work test to provide an additional condition that needs to be satisfied by taxpayers below the age of 18 in order to claim a taxation deduction for personal superannuation contributions.

The bill modifies slightly retirement savings accounts portability time frames and also amends the Superannuation Industry (Supervision) Act, addressing an incorrect cross-reference relating to the cancellation of registrable superannuation entity—RSE—licences. Those provisions in themselves are not particularly controversial. The provision which has been subject to debate is the one dealing with the simplification of superannuation guarantee earnings bases. Specifically, the amendments in this bill remove provisions which currently allow earnings bases that existed prior to 21 August 1991, when the SG was introduced, to be used to calculate an employer’s SG obligation.

The amendments remove provisions which currently specify an earnings base for employers to calculate their SG obligation in relation to employee members of the Seafarers Retirement Fund, and they remove provisions which currently specify an earnings base for employers to calculate their SG obligation in relation to employee members of the Aberfoyle Award Superannuation Fund. The amendments also remove provisions which allow earnings bases to be specified in industrial awards, superannuation schemes, occupational superannuation arrangements or Commonwealth or state laws to be used for SG purposes and require all employers to calculate their SG liability against an employee’s ordinary time earnings.

These reforms are enormously overdue. They have been overdue for a long time. Like all senators in this place, I have been regularly lobbied by various workers who have complained about the fact that superannuation guarantee calculations do not include a wide range of important parts of the remuneration. In particular, nurses, miners and other people have very large amounts—

Senator Sherry—There’re more in Queensland.

Senator CHERRY—There are a lot in Queensland. A lot have been to see me. Nurses, miners and others with extensive shift loadings and other loadings have been suffering from the fact that their superannuation guarantee does not include those loadings in the current earnings base. It is disappointing that these issues were not addressed at the time the SG was introduced by the previous Labor government. I am pleased that after 13 years we are finally getting around to looking at a proper earnings base
for superannuation guarantee. I should commend the government on bringing this measure forward, which was announced by the Treasurer in his *Intergenerational Report* response earlier in the year.

The only disappointment with this particular measure is the time frame over which it is going to occur. The amendments will apply from 1 July 2010, which is, of course, in six years time. It makes you wonder why nurses, miners and other shift workers have to wait for another six years before their superannuation is calculated on the basis of their entire earnings, as opposed to simply calculating it on their base rate of salaries. The Democrats think they have been waiting long enough—that 13 years is long enough to wait for your superannuation to be calculated on the basis of all your earnings, as opposed to simply part of your earnings—and that the 2010 transition period is too long.

We can understand the need to have a transition period for employers, but we think 13 years is reasonable. Employers have for some time now enjoyed the benefit of not being able to pay superannuation guarantee on the basis of their entire earnings, as opposed to simply calculating it on their base rate of salaries. The Democrats think they have been waiting long enough—that 13 years is long enough to wait for your superannuation to be calculated on the basis of all your earnings, as opposed to simply part of your earnings—and that the 2010 transition period is too long.

With that qualification, the Democrats will be supporting the other parts of the bill. I understand that an amendment will be moved by the ALP in the committee stage, and I will probably have more to say on that matter when we reach that amendment.

**Senator Lees (South Australia) (11.25 a.m.)**—The *Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004* alters the eligibility criteria for access to the government’s co-contribution scheme. I am very pleased to be able to say that I was one of the four crossbench senators who ensured the passage of this, believing that it would be of enormous help to those on low incomes who wanted to make extra contributions. It is by no means compulsory, and I think that many of those on very low incomes probably have much higher priorities, whether they be mortgages or simply surviving. But what the government is doing today by extending it, particularly extending it downwards, is a positive move. It gives more Australians the option of making some extra payments towards their retirement and being able to then
pick up the government’s support for doing that.

Basically we are looking at dropping it below the previous threshold of $450 a month and also dropping it so that those under the age of 18 are able to qualify. As has been discussed, it has a controversial element in it. It has been suggested that some of those who are likely to benefit from this move may in fact be simply beneficiaries because a spouse is passing on part of their income, finding a way around some of the tax and other liabilities, and giving the option for someone who earns little—in fact, it is 10 per cent, a very small amount of that income—to qualify for the co-contribution. My understanding is, however, that that 10 per cent is already in legislation. I agree with Senator Cherry that it is something that we are going to have to look at. With the monitoring programs and processes that are in place, I think it is very important that we keep an eye on that and perhaps look in the future at 50 per cent rather than at 10 per cent earned income as a threshold so that we are really targeting those people who are earning their own income and wanting to put a little more away for their super. But, generally, I certainly believe that bill No. 1, with that proviso and those checks and balances, should be supported.

The Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004 will ensure that many workers who have been getting lower superannuation guarantee contributions than other Australians and Australians on comparable incomes are brought back into the scheme at the same effective rate. It would certainly be preferable, as we have waited since 1991, that this measure start a lot sooner than is planned. Again, I am very pleased to be a part of the group on the crossbench that worked to see the superannuation guarantee put in place. It is also proving its worth. It is unfortunate that we have had a group of workers—some in the coal industry, some nurses and some others—who have missed out on their fair share. This bill is righting that problem. But it does not commence until 2010, and I really do believe that this is too long. They have waited long enough. We will say more on this when we get to the committee stage. But, again, even given that small reservation, I will be supporting this legislation.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (11.29 a.m.)—I thank all senators who have participated in the debate on the Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004 and the Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004. To sum up on behalf of the government, over recent years there has been a growing realisation throughout Australian society of the importance of retirement planning and saving for the years ahead. Superannuation is a vital element in planning for a comfortable and secure retirement, providing a vehicle for people to secure a much higher standard of living in retirement than would be possible from the age pension alone. The government introduced a major initiative last year to increase incentives for low-income earners to make voluntary superannuation contributions. The government recognised that greater incentives were required to encourage low-income earners to contribute to and take an interest in their superannuation. I wish to acknowledge those on the crossbenches, Senator Lees and others, and the Democrats, who participated right up until the last fence in securing the co-contribution for low-income earners measure. It is extremely important, and it gives emphasis to a group of people trying to save for their retirement who really had very little encouragement until we got around to looking at how we could provide appropriate incentives.
The Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004 gives effect to my announcement of 14 March this year to alter the eligibility criteria for the government superannuation co-contribution. The bill will amend the Superannuation (Government Co-contribution for Low Income Earners) Act 2003 so that individuals will no longer be required to be employer superannuation supported to qualify for the co-contribution. Rather, low-income earners will need at least 10 per cent of their total income as an employee—that is the 10 per cent rule. This change will apply for all co-contribution determinations made for a person for the 2003-04 and later income years. Currently, both the 10 per cent rule and employer support are requirements to access the co-contribution. The only criterion being relaxed is the employer support requirement. This is overwhelmingly an equity measure designed to provide consistent treatment and access to the co-contribution for all low-income earners. The primary beneficiaries will be part-time and casual workers who might work multiple jobs but who may not reach the $450 per month superannuation guarantee threshold in any one job. These are genuine low-income employees who, in my view, deserve access to the co-contribution like all other low-income earners. The measure extends the co-contribution to a million potential recipients. I do not expect, quite frankly, there to be a large take-up from this group. However, that is not the point. That is not the purpose of this measure. The key point is that it should be at least available. If low-income employees can set aside a little savings, or spare change even, they should at least have the opportunity to receive an encouragement, a co-contribution, in support and recognition of their efforts. So it is overwhelmingly an equity measure that puts all low-income employees at least on a consistent footing.

To prevent double-dipping, the Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997 will also be amended to ensure that these people now entitled to a co-contribution cannot also claim a tax deduction for their personal super contributions. This will only be done for the 2004-05 and subsequent income years to avoid any retrospective effect on these new co-contribution recipients.

Other measures contained in this bill to ensure the smooth operation of the Superannuation (Government Co-contribution for Low Income Earners) Act 2003 are: specifying a time frame in which providers must repay uncredited co-contribution amounts to the Commissioner of Taxation and a further period of time after which providers will become liable to pay the general interest charge; outlining that, where the information is available, the minister will report on an aggregated and annual basis on the numbers of co-contribution beneficiaries and spouses of beneficiaries within prescribed income ranges; specifying the interest rate that will apply to late payments made by the Commissioner of Taxation; and inserting a previously omitted definition.

The Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004 gives effect to a number of the enhancements to the retirement income system announced by the Treasurer on 25 February this year in the statement ‘A More Flexible and Adaptable Retirement Income System’. The measures contained in this bill will simplify the superannuation guarantee earnings base arrangements and provide equitable and consistent treatment for all employees; remove the requirement for prescribed pension providers to obtain an actuary certificate, thus removing unnecessary red tape; align the portability time frames applying to retirement savings account providers with that of superannuation providers; and introduce an integrity
measure to require those under the age of 18 to satisfy a work test in order to claim a tax deduction for personal super contributions. The bill also contains a technical amendment to correct a cross-referencing error in the Superannuation Industry (Supervision) Act 1993 relating to the cancelling of registrable superannuation entity licences.

I note Labor’s comments that the commencement date to remove grandfathered earnings bases should be brought forward from 1 July 2010 to 1 July 2005 and the indicative positions mentioned by both Senator Lees and Cherry. I will just make a couple of observations on this point. Firstly, grandfathered earnings bases, which add enormous complexity and cost to the system, were introduced by Labor. If Labor is in such a rush to remove grandfathered earnings bases, why did Labor introduce them in the first place, and why was no sunset clause, for instance, put in the original legislation? Obviously, it is left up to this government to consistently mop up and try to look after workers who are unfairly impacted by Labor’s failure to introduce an appropriate sunset clause into the original legislation and to have some view about how these workers would be impacted.

Secondly, when the superannuation guarantee system was introduced in 1992 the rate increased gradually over 10 years to ensure that the labour market was not undermined and that the increases in superannuation costs could be paid out of productivity increases. This bill is consistent with the original superannuation guarantee approach of phasing in increases in superannuation entitlements in a careful and considered way that does not risk job losses or put adverse pressure on any group. Overall, these bills will increase the attractiveness of superannuation—as is my intention—broaden the availability of superannuation, simplify the superannuation system and continue to try to reduce red tape and make the retirement income system more flexible and adaptable.

In commending these bills to the chamber, I want to make a couple of comments about advertising that has been undertaken in respect of this very successful and very important co-contribution measure that has been introduced with the assistance of the crossbenchers and the Democrats. It is quite extraordinary that Senator Sherry seems to be criticising the government—having eventually, after some considerable delays after it was announced, got this measure passed—for actually going and telling people about it. It is an absurd proposition that you can introduce legislation with great care and consideration and have extensive debate in the Senate so that a measure is passed that introduces a novel concept to a range of people who otherwise might not be aware of the fact that it is even available and somehow or other be criticised for going out and telling them about it. It is an absolutely absurd proposition to suggest that it would be responsible of any government to pass a measure such as this and then sit on its hands and not tell anybody about it.

I really cannot imagine how anyone thinking about this carefully could suggest a different way of telling people about it so that at least it would reach people in the time frames that are appropriate—and it is all about time frames, partly due to the fact that the Labor Party were uncooperative, as they usually are on superannuation matters. It took extensive negotiations to be able to get this measure and, indeed, a small reduction in the superannuation surcharge passed. Going and telling people about it is a very sound thing to do. The amount that has been spent on it is entirely in proportion to what is being sought to be achieved.

Senator Sherry said last night in the choice legislation debate that $14 million
was insufficient. Now he seems to be suggesting that it is only because of the Democrats that there is not an advertising program about choice. But, of course, none of this stands up to scrutiny, because it does not commence until 1 July next year. There is no point in advertising over some very long lead time prior to a measure coming into place when you are trying to get people’s attention that there are benefits available to them that they may not previously have been aware of. This nonsense about superannuation and advertising is a typical Labor rave, I think. It is absolutely critical and justifiable that those who can otherwise benefit from these imaginative and far-reaching measures that will assist low-income earners be told about them. I make no apology for that. I take absolute responsibility for it. I am very proud of the fact that we have actually reached out to a whole group of people who otherwise would not be encouraged to save for their superannuation, and I am very willing and pleased to tell them about it.

Question agreed to.

Original question, as amended, agreed to.

Bills read a second time.

In Committee

SUPERANNUATION LAWS AMENDMENT (2004 MEASURES No. 1) BILL 2004

Bill—by leave—taken as a whole.

Senator SHERRY (Tasmania) (11.43 a.m.)—In my contribution to the second reading debate I referred to the Senate Economics Legislation Committee hearing on these bills and to the fact that the Treasury witnesses could not answer any questions about the assumptions on take-up rates and the costings. The witnesses had the costings and they said they had the assumptions. If they had provided them at the committee hearing I would not be asking about them today, but there was this arrogant attitude—not from the officials, because they do what their political masters tell them, in this case the Treasurer, Mr Costello, and perhaps Senator Coonan—of, ‘Don’t give out any information; don’t give out anything about the take-up rates or the estimated number of people who would benefit from the measure, in this case the change to the co-contribution base, the removal of the $450.’ There was this arrogant attitude of, ‘We’re not going to give you any information.’ It was quite astounding, but it is more and more the hallmark of this government. The reason I am getting up today—and I do not want to unnecessarily take the time of the Committee of the Whole—is to request that the minister now provide the information that should have been provided at the committee hearings on this bill.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (11.44 a.m.)—I was not at the committee hearings but the information that I can give the Senate, as I alluded to in my summing up speech, is that I do not expect a large take-up from this group. That is not the point of the measure. The point of the measure is to at least make it available and not to assume that simply because people are on very low incomes or are casual workers they should not even have the opportunity. The point is not about take-up. I know that Senator Sherry loves take-ups, but that is not really what this is about. It is an equity measure to extend it to people. No detailed information on assumed take-up, on my understanding, has been released.

Clearly we want to help ordinary workers improve their self-reliance in retirement by providing greater incentives to save through super. That is what this measure does. It provides an opportunity for low- and middle-income employees, who have been overlooked in many respects in the whole area of
being able to access superannuation, to take advantage of a much more powerful incentive than currently exists. The new co-contribution parameters are aimed fairly and squarely at encouraging those who are eligible to perhaps have a look at their own circumstances, to have a look at the TV ad that is so impugned by Senator Sherry, to say, ‘I wonder if that could apply to me,’ and, if appropriate, to take the opportunity presented to improve their retirement incomes.

But, as I have said, we do not expect a large take-up. The estimate I have is in the order of perhaps 75,000 people.

Senator SHERRY (Tasmania) (11.46 a.m.)—Why couldn’t the estimated take-up figure of 75,000 have been provided at the committee hearings? The government had it. It had it because it had done a cost estimate of 40,000 or 45,000. It was a very simple, straightforward question. We did not get an answer. Therefore, we have had to waste five or 10 minutes in the committee stage in the chamber. Why does the government hide these take-up rates? I suspect it is because, in the end, it gave an estimated take-up rate for that now infamous children’s superannuation account of 470,000, which was knocked down to 47,000. We still do not know what the take-up rate is from Treasury. They do not want to ask, because they are scared they will not find too many. We are told by industry that it is 500 to 600. I will have to check on the latest take-up rate.

This is a matter of holding the government accountable. If they are going to cost a measure and claim that people benefit then they must have estimated take-up rates. It is a matter of holding the government accountable. I am a little surprised at the relative lack of scepticism from Senator Cherry and Senator Lees, who have spoken on this measure. The government talks about lower income earners getting this $1,000. It promoted it in the budget as though everyone was going to get it. But the critical problem is that it is a voluntary measure; it is an incentive. How many people earning less than $450 a month—less than $5,400 a year—realistically can find up to $1,000 to put into super? I would emphasise that we should be realistic about what we are dealing with here.

The government says in its rhetoric that it is available—that it is an incentive for low-income earners. I do not know too many people earning less than $450 per month who are going to find $1,000, particularly as they will not be getting a tax cut if they earn less than $52,000. We know that they will not from this government; they will from a Labor government. I think there needs to be an air of reality about the extent to which this adds to retirement income savings for the considerable bulk of the Australian population. We know that a small minority of people will benefit. Certainly nowhere near a majority of Australians will benefit. This government is fond of talking about choice all the time. For a low-income earner earning less than $5,400, finding $1,000 will be very difficult. That is the practical reality. They are struggling to find a dollar to survive on.

That is the point of the question that should have been answered at the economics legislation committee hearings. We know the figure now. It is estimated to be 75,000. I do not have the other figure in front of me. I will ask the minister; she might know. Minister, how many people in Australia earn less than $450 per month? You may not have the answer, but it would be substantially more than 75,000. I suspect it would be a million or two. If you can give me the figure, fine. I can see that the advisors are looking informative, so we will get that figure and then I will conclude with some comments on this issue of the take-up rate.

Senator WATSON (Tasmania) (11.51 a.m.)—I think it is Senator Sherry who
should be having the reality check. He has done that in the past by taking the issues back to his famous Alexander pub in Devonport. The reality is that a lot of low-income families are going to benefit from this in a very significant way. I find it rather strange that Senator Sherry is now at odds with his friends in the industry super funds. They are going out there selling this as hard as they can. Obviously Senator Sherry has lost his art of communication by not being in the pub and not talking to his industry fund mates, who believe this is a good thing for their members and who are going out there selling it in a significant way.

As Senator Sherry would know, being close to his constituents, there are a lot of low-income people out there who have health and those sorts of problems in their advanced years. Somehow or other they want to get a bigger nest egg, because health issues are important. I think of the people who come into my office who have problems with their eyes. They cannot read newspapers and their quality of life is severely decreased. They do not have private health insurance. If they had access to a couple of thousand dollars, they could go into a private hospital tomorrow to get their eyes fixed up and their quality of life would be suddenly changed. So it is not only them but also their family—everybody is going to benefit.

Where is this money going to come from? It is going to come from sources other than after-tax disposable income. I think our government has done a great job in expanding this to people who earn under $450 a month. This chamber is familiar with the council workers who have been appealing to me—low-income earners—to try to get this through, because they are desperate to try to get that family savings increase. They are prepared to make the sacrifices that Senator Sherry has doubted in his presentation here today. Out there in the real world, people think this is a great idea. It just stuns me that the Labor Party is delaying a very important piece of legislation.

I can tell you, Senator Sherry, if you and your mates in the chamber knock this back, your names will be mud right around Australia. It will be further evidence that increasingly you are out of touch with reality. There are the sorts of people whom you represent—the lower income, so-called hardworking people, the people who have come on hard times—but the reality is that it is the Liberal government that is delivering benefits right across Australia to all spectrums of society. We are not just focusing on the rich, as you are, trying to divide Australian society into the haves and the have-nots.

I think it is an appalling piece of debate that you are working on. You are not looking at the best interests of your people. People at the present time are getting the benefit of a government contribution of a dollar for every dollar they put in up to $1,000, subject to certain income ranges. As a result of this measure, it will be on a three for two basis. If you put in $1, the government gives you $1.50. There would not be a better investment in town on that basis. People want to join the bandwagon. Are you not getting phone calls—

The TEMPORARY CHAIRMAN (Senator Knowles)—Senator, could you direct your remarks to the chair, please.

Senator WATSON—I am dismayed by people in this place who, with the best goodwill in the world, are not working in the best interests of their constituents. I am pleading with Senator Sherry to get back to reality, to catch the plane back to Devonport and to ask people—your constituents—what they really think of this issue and how much they want it. It is imperative. We have very little time before the end of June. It has to get through; otherwise people will be denied the
opportunity of this extra benefit which our government has recognised. I believe it is up to this chamber to deliver it as expeditiously and as quickly as possible.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (11.56 a.m.)—What we need to be looking at here is the fact that this is an equity measure, as I said a little earlier, designed to provide consistent treatment and access to the co-contribution for all low-income employees. I quite frankly hope that people on very low incomes look very seriously at this if they are able to. But I do not think that it matters overly if this does not have a huge take-up. We have given an estimate based on the behavioural changes that might follow but I do not think that that is the point.

I would be much more unhappy if I thought that the opportunity was not available for people who otherwise might wish to have it. How patronising is it to assume that, just because somebody is on a very low income, they should be treated differently and the opportunity is not even there? I do not think that is a very fair way to run society, where people on very low incomes are discriminated against in this way so that the opportunity is not even available to them. I find it a very unattractive attitude on the part of the Labor Party to be critical of the fact that people might not have very much money and, therefore, are unlikely to take advantage of that.

What I have clearly intended and said repeatedly since I was able to announce this extension is that I take the view that I should not assume that, just because people are on low incomes, they should not even have the opportunity. There is nothing compulsory about this. It is a voluntary arrangement and a very powerful incentive if people are able to actually look to their own circumstances and see whether it suits their needs. Why shouldn’t they have the opportunity? I find it quite offensive to think that, just because people are on low incomes, they should be somehow or other regarded as incapable, unwilling or simply not interested. They may be. As far as I am concerned, that is good enough for me.

The primary beneficiaries will be part-time and casual workers who might work multiple jobs but who just might not reach the $450 per month SG threshold in any one job. They are genuine low-income employees who deserve access to the co-contribution like all other eligible low-income employees and, hopefully, later on this week those on middle incomes will also be able to access some generosity in respect of arrangements for their own savings. I have said previously, in the earlier debate on this matter, that people do not need $1,000—$20 will do. They do not need to have $1,000. I think it is very unfair of those who wish to disparage the efforts that have gone into making this available to low-income earners to somehow or other suggest to them that they have to have $1,000 or else it is not going to count.

The key point is whether these very low income employees should be denied the co-contribution if they can save. Low-income earners are the people who are very much the target of this extension. It is only a small extension and I do not think, quite frankly, that we should be too concerned about a huge take-up from this group. If they wish to put a bit aside they should receive the contribution like all other low-income employees.

Senator Sherry can of course ask about take-up rates and no doubt he will. I know that Senator Sherry is very concerned about take-up rates and the exercise of that. I do not think that anyone is saying that the co-contribution is not an excellent initiative and
an excellent piece of legislation that not only markedly improves retirement incomes for participating low-income employees but has created interest in superannuation from people who previously did not take much interest in it at all. I know that from the people who contacted me after the advertising. People are interested now in whether they qualify. As far as I am concerned, it is absolutely my job to engage the community. This is one of the ways in which it is very important to create interest in super and get people to start thinking about and planning for their retirement.

We have to move the superannuation debate along. I think it is important that we have some of these very measures to shift the landscape of superannuation from some of the older thinking—important though it was at the time—to recognise that people now have different work patterns. We need a much more flexible and responsive superannuation system that will try to meet the needs of people who have to make some provision for their retirement. We want people, even people on low incomes, not to be confined to the age pension alone, although it is always there as a safety net, but to have the dignity and the interest to make some provision for themselves if they are able to do so. We do not wish to deny the co-contribution to the very lowest income employees.

I do not do this very much, but I feel very passionately about people on low incomes who have I think been left out of incentives in the previous measures we have taken to encourage people to save for their retirement. A member of the public has recently written to me about the co-contribution scheme. He writes, ‘As a low-income worker I currently earn less than $450 a calendar month from three part-time jobs—$400, $400 and $280 respectively per calendar month. This means I do not receive the nine per cent compulsory super from any of my employers.’ He asked me to consider his eligibility to apply for the super co-contribution despite his not receiving the nine per cent compulsory super.

Under the existing legislation, that person may claim a tax deduction. For a personal contribution of $100, that would mean a tax saving of $17 and a net increase in his super balance of $85—$100 less contributions tax of $15. Under the government’s proposed changes, that person would have the tax deduction replaced with a co-contribution. This would mean for his $100 personal contribution the loss of the tax saving of $17 but a net increase in his superannuation balance of $250—that is, $100 plus $150 co-contribution when we get it in and no contributions tax. Under the government’s proposed changes, that person’s super savings would be $165 better off. I do not deride that; it is not a large amount but it is significantly better. If that person decided to contribute more than $100 then obviously their superannuation balance would look even healthier.

Senator Watson has passed me a note about who benefits from the bill. He has some estimates of beneficiaries in key states. We are talking about the moment is the extension of the co-contribution to low-income earners. Realistically, based on the fact that we are dealing with those on very low incomes who are otherwise excluded, it could be up to $75,000, but if it is less I will still feel that this was appropriate, respectful legislation that extends the superannuation co-contribution to people on low incomes and does not treat them as though they are in some other category simply because they do not have high incomes.

Senator SHERRY (Tasmania) (12.05 p.m.)—Does the minister have an answer to
the question I posed: what is the number of people who are earning less than $450 a month—$5,400 a year—in Australia?

Senator Coonan—I don’t know.

Senator SHERRY—You do not know the answer. I thought the minister’s comments were a touch rich coming from a political party that opposed the compulsory superannuation guarantee of nine per cent—they absolutely trenchantly opposed it and fought it bitterly, long and hard. They fought the extension of superannuation to most Australian workers—from approximately 40 per cent to the 88 per cent I think it now is.

The point I want to make—and I have already made it but I have to respond to the minister’s debating points because she could not respond to the question; apparently she does not have a figure—is that we need to be realistic about these measures and consider them in the context of the number of low-income earners that are able to take up these incentives. There is nothing wrong with incentives but let us be realistic. The minister has given a figure of 75,000. There will not be a lot of people earning less than $450 a month who will find up to $1,000 to put into super. Our contention is that in reality it will be higher income earners—Senator Cherry used the term ‘wealthy’; I do not use that—who will give a partner or a child up to $1,000 to put into super. That is reality.

The other concern I have is that when these measures were promoted in the budget’s families package context, they were shown in cameos as though every person on a low income would benefit from this measure, as though every person would pick up an extra $500. We know that that is totally wrong and misleading, and that is the way it was conveyed in the newspapers.

Senator Watson wandered off onto the budget measures that we may or may not be dealing with later in the week. I do not know about that; the government has not scheduled it yet. Those measures deal with the extension of the co-contribution up the scale. Here we are dealing with the changes for low-income people. Senator Coonan read out a letter about a person who had three jobs. Is Senator Coonan suggesting that we should remove the $450 a month superannuation threshold for SG—that is what she was implying—so that SG is payable to all persons regardless of income, even when they earn less than $450 a month? Is the minister suggesting that everyone who earns less than $450 would receive the superannuation guarantee? We know that that would benefit all of those employees at that income level.

The other touch of reality I want to add to this discussion concerns the issue of fees and charges. Let us take up the example that Senator Coonan mentioned—let us say, a $100 a year contribution from a low-income earner. I do not think there would be much left over after fees and charges, no matter what superannuation fund you were in. I have been informed that there are some superannuation funds that are refusing to accept co-contributions below a minimum level that they set. They will not accept a co-contribution of $100 or $200 from a low-income earner. There are funds that are doing that. I have received complaints about them because of the fees and charges that they apply. I expect that we will get the response: ‘Choice, choice, choice—a person can switch funds.’ You will not find too many funds that do not charge a fee that is a substantial proportion of a contribution of, let us say, $100.

There is another issue about fees, charges and commissions. We received very disturbing evidence at the committee hearing on these bills—not from Treasury but from IFSA. IFSA had two representatives at the committee hearing. IFSA had a witness from a life company—I think it would be unfair to
mention the name of the life company because it is one of the better operators—and I asked about commission based selling, where the adviser says, ‘Put in $1,000, or up to $1,000, and you will get $1,000 from the government.’ The witness from IFSA confirmed that commissions are being charged by some planners against the government co-contribution. It is outrageous that this practice is allowed to occur, particularly on this measure. An individual might put in $1,000, the government puts in $1,000, and a commission is deducted from either or both of those payments. That is absolutely outrageous, particularly as there would be no continuing advice. Sure, you would go to an adviser and say, ‘Advise me about whether I should put in up to $1,000.’ The adviser would say, ‘Yes.’ To then charge a trail commission against the government contribution and the employee’s contribution for 20 or 30 years is simply outrageous, yet this government does nothing about commissions.

I have another question, Minister. Can you give us the detail about the fee assumption that applies in the projections you have given on the benefits of the co-contribution? Is there a fee assumption? I asked about this at the committee hearing. If there is a fee assumption what is the fee assumption that is applied to the projection cameos with respect to the co-contribution? The officers could not answer it at the committee hearing; I would like to know now.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.12 p.m.)—I do not have that information with me. I will see whether I can provide an answer.

Senator SHERRY (Tasmania) (12.12 p.m.)—Once again, I went to a Senate committee hearing to ask reasonable questions and to gather reasonable information. The information was not provided at the committee hearing. I am sure the Treasury officers have that information; they must have it. It requires a yes or no answer about the fees assumption that is applied to the co-contribution measure. The officers were asked these questions. Now the minister comes in here today and cannot provide an answer to a simple and reasonable question. The fact that I have had to repeat these questions in this chamber today means that the consideration of the bill will take longer than would otherwise have been the case. We should have had the answers; we could have saved ourselves a large part of the debate over the last hour. I want this debate and vote to be concluded by the lunch break. Can the minister assure me that she will be able to give me an answer on the fee issue? I see that the adviser is handing her something; we might get some information so that we can progress this debate.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.14 p.m.)—I am advised that there are no explicit fee assumptions in the cameos. Earnings net of fees equal seven per cent. That is as much information as I can provide.

Senator SHERRY (Tasmania) (12.14 p.m.)—No explicit fee assumptions, earnings net seven per cent—that is interesting. I do not know of many superannuation funds that do not charge any fees. Senator Cherry might be able to find us one or two in the context of the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2003. I draw this issue to Senator Cherry’s attention. We do not have any fee assumptions in the projections; yet we are told by an IFSA witness that in some cases commissions apply. I have made comments on commissions. I do find very odd the assumption that has been applied.
Finally, is the minister aware of any superannuation funds that are refusing to accept co-contributions of any level? If so—I claim it is happening—what does the government intend to do about it? It is all very well to have a measure that people can take up, but if some superannuation funds are refusing to accept co-contributions up to $1,000 then that defeats the government’s intention.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.15 p.m.)—I know of one. I have asked for some information through the industry group of which they are a member. I certainly think that that matter would be taken up through the association, and I am expecting an answer.

Senator SHERRY (Tasmania) (12.16 p.m.)—I thank the minister for that response—some honest clarity on the matter. We submit that if there is a superannuation fund refusing co-contributions that does defeat the government’s purpose. It should be law that the measure be offered by a superannuation fund; otherwise it will defeat the government’s purpose. I have concluded my questioning with respect to Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004.

Bill agreed to.

SUPERANNUATION LAWS AMENDMENT (2004 MEASURES No. 2) BILL 2004

Bill—by leave—taken as a whole.

Senator SHERRY (Tasmania) (12.17 p.m.)—by leave—I move opposition amendments (1) and (2) on sheet 4291 revised:

(1) Clause 2, page 2, (table item 3), omit “2010” (twice occurring), substitute “2005”.

(2) Clause 4, page 3 (line 2), omit “2010”, substitute “2005”.

These amendments go to the same issue, which is to remove the government’s proposed 2010 date and substitute 2005. Exemptions were originally granted in, I think, August 2001 for some employers. We do not have a detailed list, unfortunately. As I have said, I am not critical of the Treasury on this; it is not easy information to obtain. For some reason it seems to be more focused on Queensland than anywhere else. It might partly be because of the mining industry but we have not been able to find out why nurses, for example, in Queensland did not have the weekend penalties and, I think, all the shift provisions applied to ordinary time earnings. It is very difficult to find a detailed and comprehensive list of the employers, beyond some general information which you can gather anecdotally. I am certainly aware of one mining company in Tasmania which has been drawn to my attention by the Australian Workers Union.

The superannuation guarantee of nine per cent was phased in over approximately 10 years. We reached nine per cent on 1 July 2002. So there was a phase-in. Senator Cherry, there were negotiations at the time with the Senate Select Committee on Superannuation. Senator Cherry was not in this place then but he is quite correct; the Democrats did obtain a longer phase-in period. The full nine per cent now operates. We certainly would not suggest that the exemption be ended from 1 July 2002—that would be retrospective—but we think 1 July 2005 is sufficient notice. I point out that the employer should be able to argue incapacity to pay—that, if an employer believes that their exemption should not be removed from 1 July 2005, they should be able to argue that in the state or federal industrial commission. We think that that is appropriate. There may be circumstances where the employer does have a restricted capacity to pay, and we...
think it is reasonable that that be taken into account.

We think that a further six years is unreasonable. The government may have picked this up from a recommendation of the Senate select committee—I am not sure whether they did. The Senate select committee made recommendations on this about 18 months or two years ago. We think that 1 July 2005 is appropriate. The other problem is that the government has not been able to explain how this would be implemented with the employers that are exempt. What is to stop an employer simply saying, ‘We’re not going to change anything until 1 July 2010’? The ball is in the court of the employer here. They can frustrate any change until 1 July 2010. We think that that is an unreasonable approach.

I should explain that our second reading amendment, which was passed, did refer to the industrial commissions but the specific amendments before the Senate do not; they just substitute 2010 for 2005. We believe the onus would be on the government, if there were a legislative requirement to provide for the argument of incapacity to pay before the federal industrial jurisdiction, to bring forward the necessary amendment to allow that to happen. We would support such an amendment if our amendments were maintained in the bill beyond the message stage—provided that it is passed here now.

Senator CHERRY (Queensland) (12.22 p.m.)—The Democrats will be supporting this amendment at this stage for reasons that I outlined in my speech in the second reading debate. We believe that the earnings base for superannuation guarantee does need to be reformed. We made that clear in the Senate select committee report that Senator Sherry referred to. It is unfortunate that it has taken so long to come to this point. Again, the Treasurer, Peter Costello, and the Assistant Treasurer should be commended for at least acting on this issue after so many years of neglect by both the previous government and the current government.

The question is: what is a reasonable phase-in period? We think that 13 years is a fair and reasonable phase-in period. We think that 20 years is a bit long. Let us remember that employers have had the benefit of this notional employment base for the 13 years since 1991. We will support this amendment. Senator Sherry pointed out that this amendment is a bit rough and ready because it is difficult to put issues about incapacity to pay into an amendment at this very late stage. I do not have a particularly strong view on whether the issue of incapacity to pay should be determined by the Industrial Relations Commission or by the ministers themselves. It would be an exception to the general rule that the earnings base should be shifted as early as possible. Whether the earnings base should shift from 2005, 2006, 2007, 2008 or 2009 is a matter that I am happy to discuss at further length.

The Democrats’ strong view is that the earnings base anomaly should be fixed as soon as possible and that 2010 is too far into the future. We ask the government to give serious consideration to bringing that date forward, albeit with appropriate safeguards for those employers who might have difficulty adjusting to it. Certainly in my state of Queensland I have received a lot of representations on this issue, particularly from nurses and mine workers and other shift workers who are seriously affected by this. In the case of a person who does a lot of shift work, up to half of their money can be excluded from the calculation of superannuation guarantee. These figures would be familiar to the minister in bringing this provision forward because it is a significant wage equity issue. It is reducing people’s retirement incomes. On behalf of the Democrats I would encourage the minister to bring forward this date
from 2010 and look at a more reasonable phase-in period. I will support the amendment today but I would certainly encourage the minister to look at some shorter phase-in period than 2010, albeit with appropriate modifications, as Senator Sherry has suggested.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.25 p.m.)—I do not propose to spend much time on this debate; I think the parameters are quite well outlined. I do want to place on record the government’s thinking behind the date contended for here. The commencement date of 1 July 2010 was set to allow approximately two industrial bargaining cycles for employers and employees to consider and incorporate these changes into the bargaining process. The time frame allowed will certainly ensure that the labour market is not undermined resulting in potential job losses, which is another matter that the government takes very seriously. That would be a possible risk if implementation is rushed.

Another possible risk of implementing the measures too quickly is that wage growth may suffer more sharply than with a phased-in approach. It might be conceivable that some of these issues could be addressed perhaps in an earlier time frame, but after considerable consultation this was considered an appropriate balance for those who will need to accommodate these changes while not unfairly impacting on the very people we are trying to benefit. I think we need to not lose sight of that.

I do think it is highly unlikely that employers—all of them anyway—will wait until July 2010 to revise the earnings base. To insist on it being earlier, however, would remove all bargaining power from an employer on this issue. It would make it very difficult to offset a wage increase against increased superannuation entitlements or in any way link superannuation entitlements to productivity increases. For this reason the government does believe that superannuation entitlements will move progressively towards the nine per cent of OTE and for many employees will reach nine per cent of OTE prior to 1 July 2010. I would certainly hope so. I have explained the government’s rationale. I understand some of the issues that have been agitated in relation to Labor’s amendments. I understand the way that Senator Cherry is voting and I do not think that there is anything to be gained by prolonging the debate on this matter.

Question agreed to.

Bills, as amended, agreed to.

Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004 reported without amendment; Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004 Bill reported with amendments; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.29 p.m.)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

FAMILY AND COMMUNITY SERVICES AND VETERANS’ AFFAIRS LEGISLATION AMENDMENT (INCOME STREAMS) BILL 2004

Second Reading

Debate resumed from 15 June, on motion by Senator Troeth:

That this bill be now read a second time.

Senator JACINTA COLLINS (Victoria) (12.29 p.m.)—The Family and Community Services and Veterans’ Affairs Legislation Amendment (Income Streams) Bill 2004 follows on from the government’s an-
nouncement earlier this year of a more flexible and adaptable retirement income system. The principal measures in the bill amend the social security and veterans’ affairs means test assessment of income streams to provide a 50 per cent assets test exemption for market-linked income streams from 20 September 2004 and change the available assets test exemption from 100 per cent to 50 per cent for certain non-commutable income streams purchased from 20 September 2004. Labor is not opposed to the changes in the bill but does wish to note a number of concerns about the potential long-term impact of these changes on the adequacy of retirement incomes.

For older Australians planning their retirement the area of retirement incomes can be somewhat bewildering. There are myriad products that retirees can roll their superannuation into. Some have higher returns than others and some products are treated more favourably under the age pension means test. Products that are treated favourably under the pensions means test are referred to as non-commutable income stream products or complying products and these are currently assets test exempt. As such, only the income—through some quite complex arrangements—may be assessable for age pension purposes. These products are of a secure nature because they have fixed returns and there is little capacity to access capital. Over the longer term the returns will be somewhat lower than for other types of product that do not receive concessional treatment under the pension means test.

These products are referred to as commutable income stream products or non-complying products and they have no assets test exemption. These products often take the form of managed investments, and returns vary. There is also a capacity to access capital. As a commutable or non-complying product, both the assets and income are assessable for age pension purposes. The bill proposes to alter the assets test treatment of certain income stream products purchased after 20 September 2004. Non-commutable income streams which are purchased after this date will have 50 per cent of their value exempted under the assets test. This treatment will bring non-commutable products into line with new market-linked income stream products which will also have a 50 per cent exemption.

The reforms proposed in this bill are mainly in response to the increased use of income stream products by retired people and the increased diversity, design and complexity of these products. Since the early 1990s allocated pensions and annuities—that is, income stream products—have become the most popular structured private retirement income stream plans in the financial market. Billions of dollars worth of superannuation funds and other funds have been rolled into or used to purchase income stream funds. One particular concern has been that the use of complying products which are assets test exempt but which have lower returns may not be an efficient use of retirement savings. In its submission to the committee inquiry into this bill the Department of Family and Community Services argued that the proposed changes to extend assets test exempt status to the new market-linked income streams will increase competition in the income streams market and provide retirees with more choice and flexibility by making available a wider range of products that best meet their retirement needs. There is some merit in this argument, but a fine balance must be struck.

The measures will have no impact on pension recipients or potential claimants for the age pension who purchase non-commutable income streams prior to 20 September 2004. Their income stream will remain assets test exempt. However, new claimants or existing
age pension recipients who purchase non-commutable income streams after 20 September 2004 will have a less favourable assets test treatment than currently exists. This may result in a lower pension or in a new claimant or existing recipient being no longer eligible for a pension. On the other hand, the new 50 per cent assets test exemption for market-linked income streams will be beneficial as these products have features which are similar to commutable income stream products that currently have no assets test exemption whatsoever. The government argues these products will be popular because they will offer higher returns than non-commutable income streams. Despite possible pension reductions, they argue higher total retirement incomes will result.

The extent of any pension reductions will be dependent on the value of the income stream, on income derived from the product and on any other assets that the recipient may have. The current assets test thresholds are $153,000 for a single homeowner and $217,500 for a couple homeowner. Higher thresholds apply to non-homeowners. Each $1,000 in assets above these thresholds results in a pension reduction of $3 per fortnight. The assets test will only apply if it results in a lower pension than would result from the income test. However, due to the current relativities between the assets and income tests, in most circumstances the assets test reduction will prevail. During evidence given to the Community Affairs Legislation Committee, the Department of Family and Community Services anticipated that, of the 100,000 new claimants for the age pension each year, 12,000 to 13,000 each year would be affected by the 50 per cent assets test exemption, as would around 5,000 existing recipients who would switch from existing complying income streams to the new market-linked income streams.

Unfortunately the department was unable to provide the committee with details of the mix of numbers who will have a pension reduction or of the amount of those reductions. Nor could it say who would no longer be eligible for a pension. Information was scarce on what the longer term impact would be, with the department noting only that the Treasury retirement income modelling unit had advised the average superannuation payout that could be rolled into income streams is currently $80,000, rising to $100,000 by 2010. These averages are of course quite meaningless, and any impact will further depend on what other assets a prospective retiree has. I would invite the minister to shed further light on these issues if she can do so. Labor is concerned about the longer term impact of these measures, and scarce information is not alleviating those concerns. The savings from these measures are cumulative and will compound in future years as new claimants for the age pension have more substantial superannuation assets accrued to purchase income streams.

Over time, beyond the five-year time frame examined in the committee inquiry, it is possible that many low- and middle-income earners may be affected by these measures. For them it may result in a lower age pension or in no age pension eligibility at all. While the original intention of Australia’s compulsory superannuation system was to ensure sustainable growth in age pension outlays, it was also intended that it would result in higher retirement incomes for older Australians so that they could enjoy a higher standard of living.

In particular, we have some concerns about the potential impact of these measures on people with quite modest amounts of superannuation who might stand to be disadvantaged in accessing a government age pension. We need to be careful that these changes do not leave people with modest
means reliant on private growth pensions, with high fees and charges, and locked out of the age pension. Labor is of the view that these measures should be reviewed at an appropriate time to ensure there is no long-term negative impact of these measures on the adequacy of retirement incomes. Part of such a review should also include the current assets test and its relativity to the income test. Large disparities have opened up in the treatment of particular assets under these two tests, and this has relevance in relation to the changes we are debating today.

In conclusion, while the measures do in part have merit, Labor are suspicious of the government’s motives in the area of retirement incomes—with good cause. We know the government have an agenda of ‘work until you drop’, and these measures have the potential in the longer term to infringe on the age pension entitlements of Australians on low and middle incomes. There has been no evidence provided by the government to prove otherwise, a fact that is not surprising given their obsession with short-term political fixes. We need only look at the budget measures for families to see that the government are concerned about one thing—that is, the forthcoming election. They are not interested in the long-term financial pressures on families. That is confirmed by the fact that they are desperately shovelling out one-off bonuses. Their $600 family tax benefit supplement washes out of the system in just a few years due to the indexation clawback. The government are only concerned about the short-term, not the longer term, needs of families. Our suspicion in this regard remains with this bill also, and that is why Labor’s view is that these measures need to be carefully reviewed on their implementation.

Senator GREIG (Western Australia) (12.39 p.m.)—I rise to speak on the Family and Community Services and Veterans’ Affairs Legislation Amendment (Income Streams) Bill 2004. The bill changes the means test for social security and veterans’ affairs income support, as it relates to the assessment of the asset value of purchased income streams. An income stream is a regular series of payments, made for life or for a fixed term, which has been purchased by the pensioner or veteran with a capital sum or made directly from accumulated superannuation contributions. The sorts of products that this bill relates to may be purchased with either ordinary money or an eligible termination payment. Commonly, income streams are superannuation pensions; immediate annuities, such as lifetime or fixed term annuities; allocated annuities; and allocated pensions.

For an income stream to be assets test exempt it must have met a number of conditions. These include the requirement that it be paid for a lifetime, paid to a life expectancy or paid for a fixed term of 15 years or more and that it be purchased or acquired on or after pension age. Additionally, the product must pay income at least annually, make fixed pension payments allowing for indexation, not pay less than the previous year’s pension amount in any year, limit indexation to no more than five per cent or CPI plus one per cent, have no residual capital value, have limited commutation, have limited reversionary benefits and not be able to be borrowed against or transferred.

The Australian Democrats have always believed that social security and veteran income support payments must be targeted at those in need—that is, that there should not be opportunities for wealthy Australians who are otherwise well able to support themselves to evade or avoid the means test so as to claim a benefit from the public purse. In June 2001 we supported a tightening of the rules in the area of commutation and now, in keeping with our policies on the targeting of social security income support payments, we
support these provisions. The bill proposes to reduce the current 100 per cent assets test exemption for purchased complying income streams to a 50 per cent exemption for products purchased on or after 20 September 2004. We note that complying income streams purchased prior to 20 September 2004 and non-purchased defined benefit income streams will not be affected by this change, retaining a 100 per cent assets test exemption. That is good news for people who have already purchased these products. People wishing to purchase a complying income stream can do so before 20 September in order to receive the full 100 per cent assets test exemption. They can also consider the market-linked income streams, which allow exposure to growth investments and which I will address later.

It is not surprising that the government is addressing the assets test free status of retirement investments. There are many financial institutions which presently market these products as a means of holding onto a significant financial asset at the same time as obtaining an income from the public purse. A quick glance at the Internet today reveals the headline ‘Use complying income streams to minimise the assets test’ on the National Australia Bank web site. The NAB goes on to advise its customers:

One way to manage the assets test is to invest some of your retirement capital in a type of income stream product known as a “complying” or “assets test exempt” income stream. Because Centrelink doesn’t count this investment among your assets, it may increase your eligibility for age pension payments.

The NAB clearly encourages wealthy Australians to invest with it, with the primary incentive being able to also draw on the public purse. In marketing its product, the National Australia Bank explains in some detail the benefit of purchasing complying income streams as being exempt from the social security assets test. It quite openly advises readers that, by investing some of their retirement savings in this type of income stream, they may be able to qualify for and/or increase their age pension payments. The National Australia Bank then gives a case study of how a couple who own their own home and have more than $430,000 in lump sum superannuation could use the assets test exemption to gain a social security age pension and concessions.

Debate interrupted.

**MATTERS OF PUBLIC INTEREST**

*The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! It being 12.45 p.m., I call on matters of public interest.*

**Human Rights**

*Senator PAYNE (New South Wales) (12.45 p.m.)—I want to raise a number of international human rights issues in the chamber this afternoon and, if I can, to take a moment on a lighter note to say a quick happy birthday. That might seem odd in this most demanding week of parliament before the winter recess.*

*Senator PAYNE (New South Wales) (12.45 p.m.)—It is not my birthday, Senator Payne.*

*Senator PAYNE—It is not to you, unfortunately, Mr Acting Deputy President. The individual to whom I send birthday congratulations is one who has not been able to celebrate her birthday in freedom on eight occasions since 1989. On Saturday of last weekend, Burma’s Nobel peace laureate, Daw Aung San Suu Kyi, celebrated her 59th birthday whilst again being held in detention by the Burmese government. Her tireless work for democracy and peace for her people—men, women and children—cannot be forgotten or ignored. I am glad that we have the chance to acknowledge her here today, fortunate and privileged to be free from the...*
persecution and political restrictions that continue to wear down the very basis of civil society in her homeland. As the foreign minister has indicated repeatedly, the Australian government calls for her immediate and unconditional release and for the Burmese government to release the NLD vice chair, Tin Oo, and all remaining political prisoners as well. This is a fundamental aspect of Australia’s position in relation to Burma.

In honour of Daw Aung San Suu Kyi’s quiet determination to bring all that democracy can to her homeland, last Saturday the Burmese community celebrated Women of Burma Day. In 2002, Daw Suu acknowledged the role that women play in Burma, saying: ‘The women of Burma must shape not only their own destiny but also the destiny of the nation. For Burma to progress and take its rightful place in today’s world, the women must be empowered. They must play a vigorous and leading role in paving the way to social, political and economic changes in this country.’ She was particularly remembered on Women of Burma Day. Beyond the acknowledgement of the enormous contribution that Daw Suu makes to standing for the restoration of basic human rights and democracy in Burma, it also acknowledged the conditions and the struggle that all people in Burma continue to endure under the military government. As Daw Suu said, ‘In areas of conflict and crisis, it is our women and children who suffer the most.’

I was honoured to be invited to attend a ceremony in Sydney over the weekend to launch a report called Shattering Silences prepared by the Karen Women’s Organisation. It documents cases of the systemic and widespread rape of Karen women in Burma, particularly that perpetrated by military personnel. The report bravely details the abuses committed by the Burmese military against civilian Karen women. The organisation’s representatives have gathered evidence of state violence against the most vulnerable members of the community. They verified the testimony of about 125 cases of rape and other forms of sexual violence committed in recent years. Half of those rapes were committed by military officers, 40 per cent were gang rape and in 28 per cent of the cases the women were killed after being raped. This report graphically details the many stories of individual women, raped and abused by members of various battalions, by name. It speaks of the pain, the shock and the brutality imposed on the women of Karen state. This is no easy task. It is not easy to gather this information and it is difficult to put women into a position where these actions have to be remembered and repeated. In my view, that makes the words of the Karen Women’s Organisation all the more compelling.

Unfortunately, the use of systemic violence against women in situations of conflict and war is not an unusual occurrence. In fact the United Nations Development Fund for Women, or UNIFEM, estimates that up to 20,000 women were raped in the conflict in Kosovo and that up to half a million people were raped in Rwanda during the conflict in that country in 1994. It has been said before in this chamber, and it will be said again, that sexual violence against women is unacceptable under any circumstances—but it is simply reprehensible where it is state sanctioned, let alone state perpetrated.

In speaking about the challenges of disadvantaged minorities in countries like Burma and in acknowledging some of the most pressing human rights situations internationally, I think it is appropriate to recognise those nations who do make an effort to resettie displaced peoples from across the globe. On Sunday of this week, the government joined with the global community in acknowledging World Refugee Day. Australia has a formal humanitarian resettlement pro-
gram, which we should note and commend for its importance in supporting globally displaced people. In the past 10 years alone, we have resettled more than 100,000 people under our dedicated refugee resettlement program—taking the total resettled to somewhere around 600,000 refugees since World War II.

Yet, according to the most recent statistics from the United Nations High Commissioner for Refugees, there are over 17 million asylum seekers, refugees and other people of concern to the UNHCR in refugee camps and settlements around the world. What does that mean for the 142 state parties to the refugee convention of 1951? It means that only 16 of those countries have formal refugee resettlement programs. Australia has one of the three largest dedicated resettlement programs in the world. For those who do not have such a program—for the overwhelming balance of the countries, who are prepared to be states parties to the refugee convention but not to make the commitment to resettle in their own countries in a formal fashion—I think it is imperative that the international community encourages them to look long and hard at their own position and whether their positions of advantage should in fact dictate otherwise.

I want to refer today to one initiative in this area which has come across my desk recently of a small group making their own difference. I am a member of the Business and Professional Women’s Organisation in Parramatta. Like many of us who are members of community organisations, I have to confess that I do not get to its meetings often enough, but I am a very proud member of that organisation. When I saw BPW’s recent newsletter about security of women, I was minded to refer to it today. It said:

Business and Professional Women Sri Lanka has taken the initiative to create the world’s 1st Global Peace Village for the displaced families in Sri Lanka, a concept which is hoped will carry on in other countries through international networks and the women of the world, by lending a hand towards initiating self-sustainability.

I think that this effort to create the village in Illukpitiya in Polonnaruwa is an excellent example of what can be done to address the plight of these individuals and their families when organisations like BPW, with support of government, work together. The Sri Lankan Minister of Rehabilitation, Resettlement and Refugees, Professor Jayawardena, pledged to provide all the food for the global peace villages until the houses which are being constructed are completed. There are staggering statistics of refugees and displaced persons in Sri Lanka, which demonstrate that at any time in this one country over half a million people require food and shelter. Over 85 per cent of those displaced people wish to return to their point of origin and some families have never lived on their own family’s land. This very small attempt to bring relief to the people displaced by conflict in Sri Lanka will not only provide a permanent shelter for the refugees but will be marked by an ability to plan for self-sustainability in the future. At the moment, these people are often not able to plan to even eat tomorrow.

It is my contention that much more needs to be done to help these people in Sri Lanka and people from all over the subcontinent—from Africa, from Europe and from Asia. But nothing short of meaningful global leadership can be accepted for these people who live on the very edge of humanity.

I have said before, and I reiterate today, that I think our government and Western developed nations can play a very important role in seriously lobbying for a special session of the United Nations General Assembly on the issues of displaced people and people movement, in a similar vein to those which have been held in the past few years to ad-
dress other global issues, including HIV-AIDS and children. There are solutions to these problems. I know that there can be a greater focus globally on helping the most vulnerable and stateless members of the global community, but it takes a willingness to address the difficult issues.

I also want to speak for some minutes today about the trafficking of human beings—in particular, the trafficking of human beings for use in the sex industry. For most people it is a subject that immediately evokes feelings of disgust, anger and contempt. In recent times, the United States Department of State report from the Office to Monitor and Combat Trafficking in Persons has been released. It identified Australia as a tier 1 destination country for Chinese and South-East Asian women trafficked for prostitution, as well as Canada, the United Kingdom, New Zealand, Italy and France, amongst others. But it is important to note that the report also identified Australia as one of the world’s leaders in combating this particular growing menace. In fact the majority of observations about Australia in this regard are positive.

The government of Australia complies with the standards for the elimination of human trafficking and, in October 2003, announced the development of a package to deal with this threat. Released on 17 June, the Commonwealth Action Plan to Eradicate Trafficking in Persons is available through the Attorney-General’s Department. It is a comprehensive document which deals with initiatives taken by the government to put an end to this trade and demonstrates the government’s commitment on the issue.

I will briefly outline some of those initiatives. They include $20 million in new funds to fight this crime; the creation of a 23-person Australian Federal Police strike team, known as the Transnational Sexual Exploitation and Trafficking Team; a new senior immigration officer position in Thailand specifically for this issue; a domestic community awareness strategy; a range of comprehensive measures for victim support; and reintegration assistance for victims who return to South-East Asian countries.

In fact, two weeks ago in Brisbane the government hosted a conference of experts from over 40 countries in this region on people-smuggling, trafficking and transnational crime in our region, which, I hope, will produce very effective results. In the past year we have signed anti-trafficking agreements with Cambodia, Burma, Laos and Thailand with the aim of improving international cooperation and aiding criminal investigations. We all condemn the trade in human beings. As Minister Chris Ellison said in response to the Department of State report, one person trafficked is one too many. We must also be committed to ensuring that our response is comprehensive and effective.

Finally, it would be remiss of me not to remark today, in a discussion on international human rights issues, on the actions currently being carried out in Sudan, where parts of the Sudanese government are regarded as engaging in large-scale genocide and ethnic cleansing in what the United Nations and our foreign minister have described as the world’s worst humanitarian crisis today. I refer to both UNICEF and Human Rights Watch documentation on the unfolding disaster. Both NGOs and the UN have made it quite clear that what the government of Sudan is doing is declaring war on the people of Darfur from the Fur, Masalit and Zaghawa communities and is sponsoring militias in their campaign of terror. In fact, the government is accused of supporting the militias, of providing them with uniforms, weapons and supplies. These militias have thus far murdered thousands of people, raped women, razed villages and destroyed food stocks and other essential commodities.
In many cases the accusations extend to the government forces supervising and directly engaging themselves in the large-scale slaughter of innocents, the execution of civilians, including women and children, and other acts of depredation. They have driven over one million civilians into camps and settlements in Darfur, where they are barely allowed to survive and are subject to constant abuse. More than 100,000 others have managed to flee to neighbouring Chad, but the majority of these victims remain trapped in Darfur, essentially waiting to die. They are, in fact, now the world’s largest internally displaced population. The actions of the Sudanese government in this regard are completely unacceptable. They are a gross violation of human rights. Acts of genocide and ethnic cleansing by any nation warrant our attention, and under no circumstance should they be ignored.

This is a conflict which has been brewing for years, but it escalated in February last year when two rebel groups—the Sudan Liberation Army and the Justice and Equality Movement—demanded an end to economic marginalisation and sought representation in the Sudanese state. They also sought government intervention to end the abuses of their rivals, who have a tradition of nomadic militias. The government reacted to this armed political threat by targeting the civilian populations from which the rebels drew their recruits. The attacks by the government and the militias are normally on civilians, though, not on rebels.

The international community has so far exerted only little pressure, in my view, on the Sudanese government to discontinue these crimes against humanity, although the Security Council did approve a resolution on 11 June urging an immediate halt to violence in Darfur. In my view, by doing nothing we as a world community are condoning these actions. If the world community fails to act now, it will soon be too late. I refer to contributions from the Australian government in relation to humanitarian assistance and emergency aid in this regard—commitments in May and June this year of $5 million and $3 million respectively. But this is a ringing bell for the world, not just for governments who are in a position to give some emergency assistance. It is a ringing bell for human rights and it is a ringing bell for all democratic peoples.

Privilege

Senator MACKAY (Tasmania) (1.00 p.m.)—That was a good speech, Senator Payne. Today I rise to inform the Senate of an extraordinary series of email exchanges that I have had recently with Herald Sun columnist Andrew Bolt. I received an email from Andrew Bolt on 3 June this year, which reads as follows:

Dear Senator

I notice with astonishment, as a former Labor Party staffer—I assume he is referring to himself—your description of me in committee hearings as "far Right". In fact, I am bitterly opposed to the far Right—as any Jewish community in Melbourne, for instance, could tell you—or as my own writings might inform you. I am opposed to the far-Right for precisely the same reasons I am opposed to the Left, and particularly the Greens.

Given that, can you provide me with a definition of "far Right" which you believe applies to me?

If you cannot, will you formally correct the record? In doing so, will you note that I consider myself a rationalist and humanist, with some conservative leanings? It is not as crisp, nasty and denunciatory as "far-Right", but it does have the virtue of being accurate.

I await your response with some eagerness.

I was a bit amazed by this, so I looked back over the Hansard of the estimates committee hearings. I will not go through the exchange but I refer those who are interested to the
I advised Andrew Bolt yesterday by return email that I had made this referral to the Clerk. I was extremely polite and further advised him that, on receipt of the advice, I would let him know of my intended course of action. He wrote back to me, and I will read his response:

How preposterous. First you blacken my name with a false assertion, and then you complain when I ask you to correct the record. You are misusing your privileges most shamefully.

I replied to Mr Bolt that this latest correspondence was simply formal acknowledgment, to which he then replied:

But is there to be any answer to my original request?

You said something about me in committee hearings which I maintain is offensive and untrue. Will you justify your allegations, or correct the record?

And so it goes on and on. I replied that it was in the hands of the Clerk of the Senate, that prima facie there may be an issue of contempt of the Senate and I had been advised not to enter into what I thought was a fairly tedious email exchange. He wrote back to me and unfortunately I do not have time to read it.

After the final email, which I am happy to table or to show anybody, the email exchange ceased while I awaited the advice of the Clerk of the Senate. Whilst I was doing that, I did a bit of background reading on Mr Andrew Bolt’s columns. I noted an extraordinary history of accusation and allegation as to what he said about other people. A quick search on the Internet illustrates the extent of Andrew Bolt’s unjustified—in many cases, outrageous—criticism and attacks on others. I will not repeat all the insults in detail, as I find most of what has been said to be nothing short of offensive, ill-informed and derogatory. However, I have an abridged list of his more recent targets.

---

Senator Environment, Communications, Information Technology and the Arts Legislation Committee hearings of 25 May, *Hansard* pages 57 to 58, and they can judge for themselves whether Mr Bolt’s interpretation was accurate. In brief, I did refer to Mr Bolt as, in my view, far right. I said some other people would agree, but I did agree with Senator Kemp that not everybody would agree.

You may ask what I did with this email. I thought: ‘Well, Mr Bolt is obviously having a bad day. Maybe he’s a bit cranky. It happens to the best of us, I suppose.’ So I decided that nobody could be such a big sook and I ignored it. On 22 June, yesterday, I received another email from Mr Bolt reminding me of his earlier email and asking that I justify ‘my offensive misrepresentation or publicly correct the record’. This is quite serious. He went on in this email to write:

I’m presuming from your failure to respond that you are unable to do the first, yet too unprincipled to do the second.

Before I write about you, I felt it only fair— given my own preference for checking before criticising—to give you another opportunity to do the right thing.

My first reaction to this email was one of surprise and astonishment. I was surprised at his reaction and astonished at what I consider was a threat. I, myself, do not care too much—I have been around politics for a long time—but I wondered whether this was recidivist behaviour on the part of Mr Bolt. I passed it on to the Clerk of the Senate, Harry Evans, and made a casual inquiry as to whether this constituted a potential contempt of the Senate, because it seemed to me what Mr Bolt was saying was, ‘If you don’t correct the record, I’m going to write a nasty article about you.’ In the Labor Party, as you would know, Mr Acting Deputy President Marshall, that is a bit of a badge of honour, but I do think it is an odd way to go about treating a democratically elected institution.
On 2 June 2003, in an article entitled ‘A kick up the arts’, Mr Bolt attacks Alison Broinowski, a diplomat, academic and author, as being a grant fed artist. ‘Alison who?’ he asked. He even went on to say:

... along with her even more distinguished husband Phillip ... we’ve paid this glamour couple to sell our rotten country to the world.

I am sure Ms Broinowski’s husband, Richard, will not have appreciated that assertion. Has Andrew Bolt apologised to them? No, he has not. On 2 June 2003, Mr David Marr, a favourite target of Andrew Bolt’s, is also referred to in his column as a ‘grant fed artist’. The column said that he has received assistance from ‘grant fed institutions and his grant fed clique’. On 30 March 2004, this year, he said:

Marr uses the $1.2 million we pay for his ABC Media Watch program to attack his personal enemies.

Given the correspondence that I have outlined, the word ‘ironic’ does spring to mind. Has he apologised to David Marr? No, he has not. On 7 April this year, with respect to Premier Bracks, Mr Bolt wrote:

I wish I was drinking whatever Premier Steve Bracks sips to mellow out.

One could suggest that, given Bolt’s ravings, he does need to settle down a bit, particularly at the moment. However, I doubt he intended these comments to be complimentary. On 28 March 2004, Bolt also said of Premier Bracks:

It’s scary how religion can mess with your mind. Just look at Steve Bracks’s decision this week to ban genetically modified crops for four more years.

He then went on to say:

And so the Bracks government, like Tasmania and Western Australia, have banned GM canola crops. Can’t offend those Green zealots, you know.

Knowing too well the animosity that exists in Tasmania with respect to Green groups and the state government on occasions I find these comments astounding. The inference that the Tasmanian government is selling out to ‘Green zealots’ would be a great source of amusement to both Premier Paul Lennon and Senator Bob Brown, if he were here. He also attacked Aboriginal leaders and film-maker Phillip Noyce, in his article entitled ‘Rabbit-proof myths’, as lying about the stolen generations, going so far as to write:

The Aboriginal leaders who falsely claim they were ‘stolen’, the writers who exaggerate the number of children removed, the silly compensation cases that collapse and the slick claims of genocide all risk making every claim of black suffering seem a cynical try on.

Has Andrew Bolt said sorry? No, he has not. On 28 March 2004, in his article entitled ‘Muslim trouble brewing’, he attacked the Muslim school King Khalid Islamic College for not having one VCE result recorded in two years, saying:

It’s asking for trouble to have one group in a multi ethnic community producing children without the schooling to get ahead ...

However, what Mr Bolt did not say is that the reason this college has not had outstanding VCE results is that the school pushes its better pupils—25 to 50 per cent of senior year students—into the more academically challenging International Baccalaureate Diploma program, which is recognised by the world’s finest universities, while the VCE often is not. Has he apologised to King Khalid Islamic College for the slur? No, he has not.

On 11 June 2004 he refers to Peter Garrett as the ‘ALP’s false prophet’, being ‘no politician’, who ‘represents exactly the worst of our New Agers—that toxic mix of extreme cynicism and mystic gullibility’. He says that in Peter Garrett’s world ‘compromise is a sell-out, facts a nuisance, authority a con and
rationality just the sign of a cold heart’. Has he apologised to Peter Garrett for these offensive sentiments? No, he has not.

On 26 March 2003 he refers to another favourite target, the esteemed leader of the Labor Party, Mr Mark Latham, who, according to Bolt, is ‘unfit for leadership’. He goes so far as to say that ‘Australians may die in terrorist attacks because of the Labor leader’s unforgivable recklessness.’ Has he apologised to Mark Latham? Will he? No, he has not; no, he will not. In response to the Redfern riots Mr Bolt writes about what he refers to as our ‘new racism’. According to Mr Bolt:

It is already racist and divisive enough that we have an Aboriginal-only ‘parliament’ in ATSIC, as well as taxpayer-funded Aboriginal-only services such as the Aboriginal Legal Service ...

He goes on:

But now here comes Mark Latham’s federal Labor Party, promising more of this New Racism that has delivered nothing but hatred and failure.

A good example of Mr Bolt’s hypocrisy can be seen in his own column nine days later when he writes, in response to criticisms levelled against him, that ‘being called a racist hurts’. So Mr Bolt does not like being called a racist, but he calls everybody else a racist. I think he is a bit thin-skinned really. Mr Bolt said that being called a racist ‘stings, given all my life I proudly thought I was the opposite’.

It appears that Mr Bolt has been oblivious to what others have found obvious. To him, the allegation of racism hurts; however, this does not stop him levelling accusations against others, who undoubtedly also proudly consider themselves the opposite—and note, who have no capacity for redress. It is nothing short of hypocrisy for Mr Bolt to accuse others of being racist when he does not like the tag being applied to him. In reference to himself on 20 June 2004 Bolt refers to ‘we conservatives’. In July 2003, in his column ‘High price of bias’, Bolt notes:

*Insiders* ... usually has me or one other non-Left commentator to balance the two on its panel from the left.

This comes as a great surprise to the Labor Party. Commonsense suggests that balance is not achieved by having left-leaning people on the panel and others in the middle. To achieve balance such as this the non-left commentators must surely be from the right, but do not say that to Andrew Bolt.

I have only done a quick Internet search, and unfortunately time does not permit me to go on and on with the plethora of evidence. That aside, I would like to quote from the advice of the Clerk of the Senate yesterday with respect to the very serious issue of contempt of the Senate. Going back to the original email, I remind the Senate that Andrew Bolt said:

Before I write about you, I felt it only fair—given my preference for checking before criticising—to give you another opportunity to do the right thing.

Mr Harry Evans says:

This statement appears to be an attempt to press you to—

*Senator Ian Macdonald interjecting—*

**Senator MACKAY**—Senator Macdonald thinks this is really amusing. Contempt of the Senate is actually very serious.

**Senator Ian Macdonald**—The whole speech is a real laugh; a real hoot.

**Senator MACKAY**—That just says everything you can say about this government, I have to say. The advice continued:

... change your parliamentary remarks by the threat of an article critical of you.

The Senate’s Privilege Resolution No. 6, setting out matters which may be treated as contempts under the *Parliamentary Privileges Act 1987*, provides in paragraph (2):
A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence a Senator in the senator’s conduct as a senator or induce a senator to be absent from the Senate or a committee.

It is well established in the case law that an action which is otherwise lawful, such as publishing a critical press article, will constitute a contempt if it is carried out or threatened for the purpose of influencing proceedings in parliament. It is also well established that a threat to publish critical material to influence such proceedings is an improper action within the meaning of the prohibition.

This is all from the Clerk of the Senate, which Senator Macdonald finds so amusing. The Clerk continues:

In case it is thought that the parliamentary contempt jurisdiction is unusual in this respect, it should be pointed out that, if Mr Bolt’s statement were made to a participant in court proceedings, it would constitute contempt of court.

If Mr Bolt’s statement were the subject of inquiry, he may be able to offer some innocent explanation of it such that it should not be held to be a threat. On the face of it, however, it has all the appearance of a threat. A court would probably not accept any explanation if contempt of court were the issue.

As you can see from that response, my initial reaction to Mr Bolt’s correspondence was spot on. He is out of line. He threatened me, I suspect he has threatened others and he is potentially in contempt of the Senate under the Parliamentary Privileges Act. I have no intention of apologising to Mr Andrew Bolt at all but I will say one thing to Andrew Bolt: do not take yourself so seriously and, for goodness sake, do us all a favour and grow up.

Environment

Senator LEES (South Australia) (1.15 p.m.)—Australia is facing a number of critical environmental challenges, and I want to spend my few minutes in this MPI debate concentrating on just three of the major issues facing Australia’s environment. Firstly, I will look at the Murray-Darling Basin. It is not news to anyone that the whole basin is in serious trouble—and that is putting it mildly. From the salinity time bombs to the dead and dying red gums, from the degraded wetlands along the river banks to the clogged river mouth, the evidence is everywhere.

For those who say that this is all a beat-up and that we do not have anything to worry about, I am more than happy to arrange a trip along the river, perhaps to Chowilla and the lower part of the river to look at what is left of some of the wetlands, or perhaps to the Murray mouth to see first-hand what we have done to Australia’s major river system.

To the recalcitrant irrigators who refuse to talk sensibly about water savings, about volumes and about environment flows, I give a warning: ‘It won’t just be Adelaide that is in serious trouble. Poor or salty water will do nothing for your profits. It will put your whole irrigation systems at risk. You can’t continue to water crops as the water gets saltier. You won’t get good, if any, profits.’ I say to the good irrigators that I sympathise with their situation. In South Australia many irrigators have done the right thing. They have listened, particularly to the state government, and they have become efficient. The 85 per cent efficiency targets seem to have been met very extensively—and there are people who are doing even better than that.

But then along comes the state government with its across-the-board water restrictions and cuts of 30 per cent. That hits the most efficient the hardest. Their vines and citrus are already on the minimum amount of water that is possible. The inefficient irrigators can get through this because what they waste can now be diverted onto their crops and they can put in place enough measures
with this amount of water to get through the hard times. I think that sends a very wrong message that will result in some very bad outcomes. It penalises those who are responsible irrigators and it rewards waste.

We must ensure that the various measures that we are taking to change water use, to conserve water and to reduce consumption to improve the health of the river do not do even more harm. We must not end up with cures that are worse than the initial problem. One specific example of a cure that may be doing more harm is the salt interception schemes. There is no doubt that we have to remove the salt before it gets into the river. These schemes are designed to prevent underground saline water from flowing into the river itself. This water is pumped back away from the river into evaporation basins—we were told they were evaporation basins; we were also told that the water would not find its way back to the river for thousands if not tens of thousands of years. However, it seems that the highly saline water there is not evaporating. Instead of 80 per cent evaporation and 20 per cent seepage there is 80 per cent seepage and as little as 20 per cent evaporation, and the water is moving back to the river far more quickly than anyone expected.

When you look at the maps for future salt interception schemes and visit the Stockyard Plain scheme, you see that what we are doing will destroy what little of the old Mallee is left. It will destroy productive farmland, and all the flora and fauna that rely on that remnant Mallee will be gone as well. I say to all governments, particularly as they will meet on Friday: take a careful look at the measures being put in place to supposedly save the river, because some of them are doing more harm than good. With climate change, we do not have long to sort out the basin’s problems before they are beyond redemption.

The federal government cannot continue to just complain and criticise the states for their lack of action. If we do not find a solution at the COAG meeting on Friday, then I think this really is the last chance. If we cannot get cooperation, then the Commonwealth needs to get much tougher than it now is with the states. If all states still will not agree to find their fair share of the already agreed 500 gigalitres to maintain the reasonable health of the river, if they will not agree to manage this water so that we get flooding regimes back for wetlands like Chowilla and if they will not agree to clearly commit to managing the river in a sustainable way, then the federal government needs to take over.

I believe that the powers are already there for the Commonwealth to act. There are powers under the EPBC Act, in particular, and powers through funding strings that will make the states sit up and listen and be prepared to talk seriously. We could, if still in doubt, put it to a referendum. I think most Australians would support the Commonwealth stepping in and taking over the basin, because they are sick of all the talk and they are sick of the inaction. They want to see some results. The federal government has been reluctant to step in. When we look at what the states have been doing, we see that some have done better than others. Some of the key issues, such as stopping the opening up of new irrigation schemes until we have at least got the river back in a reasonable state of health, have to be tackled.

The South Australian government is opening up new irrigation. It has been leasing water saved through the upgrading of the Loxton Irrigation Scheme. The government is buying back licences, but apparently it will not be committing them to our share of the 500 gigalitres; it wants to sell them on for domestic and other purposes and make a profit. South Australia says that it is committed to improving the health of the Murray
but, when it comes down to it, the South Australian government cares more about SA Water making a profit than anything else. This year SA Water has to put over $220 million on the table for the SA budget bottom line.

The second issue is energy. It is actually the Commonwealth that is lagging behind with energy. I note with interest that the states are meeting on some of these issues this weekend. On this issue, it is the Commonwealth that is stuck in the past; it is the Commonwealth that refuses to take any sensible action. One example of this was in 1995, when the original COAG agenda on energy policy was folded into the national competition policy. The principles of agreement in 1995 connected competition policy to ecologically sustainable development. The initial attempt to establish a national electricity market in 1990 was concerned to encourage and coordinate the most efficient economic and environmentally sound development of the electricity industry. One of the objectives of the national energy policy framework is:

Mitigating local and global environmental impacts, notably greenhouse impacts, of energy production, transformation, supply and use.

However, the federal regulations that govern the workings of the national electricity market make no mention at all of sustainability or the environment. These regulations are called ‘the code’. The text says, ‘The objective of the national electricity market is that the market should be competitive.’ There is no mention of sustainability at all in the code, and I will look at this in more detail when we come to one of those pieces of legislation, which will be before us shortly.

Looking at this government’s recent energy statement, their refusal to even commit to the existing promise of a two per cent MRET—or that two per cent of our electricity be mandated, or indeed generated through renewable sources and means—is appalling. It is short-sighted and it will take Australia backwards. When we look around the world and see what other OECD countries are doing, indeed what some of the developing nations are doing, we can see that Australia is falling further behind. We should have seen Australia looking at some of the best practice models and at a 20 per cent MRET. Even a 10 per cent MRET would have made a real difference to these emerging industries.

As I go through all of the reports—indeed, in some cases they are quite conservative reports—on this issue, the lowest agreed target that I can find is 3½ per cent. No-one is even talking these days about two per cent, and with a 3½ per cent target we would still see jobs growth. We would still see Australia at least make some progress. But, no, it seems very much that the fossil fuel industry, particularly the coal industry, has won that debate. We can only hope the government sees sense in the not too distant future.

Of course, we welcome the few pilot programs for solar energy and some initiatives for wind, but we need to see the use of these emerging technologies for generating electricity at a national level, at a meaningful level, and not just rely on pilot programs. I believe that as bad as this, if not worse, is the huge boost for diesel. If the government wants to support a specific industry—perhaps in the agricultural sector or local government—then there are a raft of upfront, open ways of doing it which are far less damaging. This massive level of support for diesel only will undermine what good progress has been made with remote solar generation and with the growing competitiveness of small wind generation, including on-farm wind. It will undermine gas and everything else. It will not just prevent us going forward; it will actually undermine what progress has been made and take us back
into the last century. It will undercut the price of all other fuels. I guess we will wait and see who wins government after the election, but I will be working hard to undo this support as we work towards legislation on this issue.

The third issue I want to speak about today is biodiversity hot spots, those areas that have so little time unless we do something quickly. I congratulate the Commonwealth government on the implementation of the EPBC Act, which has proven its worth. There have been some tremendous successes in the protection of remnant vegetation and flora and fauna. Indeed, some cases that have found their way through the Federal Court have proved the value of this piece of legislation. But neither the Commonwealth nor the states are prepared to tackle the last few really hard issues here, and we do not have a lot of time.

In my home state of South Australia we have those remnant pockets of Mallee that, apparently, are going to be sacrificed for salt interception schemes. We have the Eastern Mount Lofty Ranges, with only four per cent of its natural vegetation left, and the Flinders Ranges et cetera—a long list of critical habitats in South Australia, where the birds are disappearing, the understorey has gone and, indeed, the small mammals have gone as well.

In Tasmania we still have clear-felling in some of the most precious forests that Australia still has. From the Tarkine to the Blue Tier, we see rainforests being destroyed. We see areas that actually survived the last ice age some 16,000 years ago, unable to survive the bulldozers and the woodchip mills. Not only are these forests important in their own right; they are extremely important for biodiversity, for the rare and endangered ecosystems that they contain. They are also important for tourism. Indeed, I would argue that these Tasmanian forests are the salvation, the future, of the Tasmanian tourism industry. As someone who has walked a number of the Tasmanian walking trails I have found that they are absolutely packed. At some times during the year there is a queue to get through at some of the entry points.

Yet, what is the Tasmanian government doing? It is standing by while these areas are destroyed. These are naturally timbered areas that not only the future of the tourism industry could rely on but many towns now rely on for their water supply. We see town after town put under more and more stress as their water supplies dry up and as their water supplies are put at further risk through further clear-felling. Surely, now is the time to say enough to the clear-fellings, enough to the firebombing and enough to the use of 1080 poison. Yes, it will cost money. I am not suggesting that we walk away from the timber industry—it will cost money. But let us get in now and do it before it is too late, before these places are gone forever. They are being destroyed at such a rate that it is absolutely unsustainable for the industry to keep going down this path.

We should be urgently expanding our world heritage areas, expanding our national reserve system, our national parks. We should be putting money into retraining those people who now drive bulldozers to drive tourist buses. We should look at retraining those people who are intent on trail ing through our wilderness areas with chainsaws to trail through them with tourists, to walk into the ancient forests and enjoy what they find there. It is not too late. But these areas are under such pressure that action has to be taken and taken very shortly.

### Trade: Free Trade Agreement

**Senator BRANDIS** (Queensland) *(1.29 p.m.)*—This morning, the honourable member for Boothby, Dr Southcott, tabled in the
other place the report of the Joint Standing Committee on Treaties into the Australia-
United States free trade agreement. I understand that the report will be tabled in the
Senate this afternoon by Senator Kirk. The JSCOT report sets out in some 300 pages of
detail the effects upon Australia of the free trade agreement and concludes that the treaty
should be ratified. At the very end of the report, in a miserable two-page document er-
roneously entitled ‘Dissent’, opposition members decline to adopt the recommendations
of the majority. They do not, however, actually dissent; they merely seek to keep their options open. As Dr Southcott said in his tabling speech this morning, not a single senator or member who sat on the JSCOT inquiry has recommended against ratification of the treaty giving effect to the free trade agreement. The majority have recommended in favour of ratification while the Australian Labor Party members want to keep their options open.

As we speak, those of us in this building well know that a huge and historic row is brewing in the corridors of Parliament House within the councils of the Australian Labor Party on this issue of vital significance to the future of this country.

Senator McGauran—They are still thinking about it.

Senator BRANDIS—They are not thinking about it so much, Senator McGauran; they are still yelling at each other about it. It cannot possibly be said that the JSCOT process has not produced an exhaustive, thorough examination of the FTA. JSCOT received 215 submissions and held 11 days of public hearings in seven cities. There is nothing more that the Labor Party and the Labor members of that committee need to know that that process did not reveal. The real reason that Labor members were not prepared to sign off on the report, while not disagreeing with its findings either, has nothing to do with the merits of the FTA; it has everything to do with the turmoil which has engulfed the Australian Labor Party. The Labor Party are deeply, bitterly divided on this issue. It is a totemic issue for them. It sets the modernisers against the primitives; the internationalists against the isolationists; and the supporters of the American alliance against the deep-running strain of anti-Americanism which has long corrupted the Australian Labor Party. It sets the advocates of open economies against the protectors of closed ones. The way Labor resolve this issue will tell us everything we need to know about the direction in which modern—or should I perhaps say pre-modern—Labor would take this country.

Some Labor politicians have already gone on the record supporting the adoption of the FTA—most recently Mr Gavan O’Connor, the shadow minister for primary industries, in his remarks to the National Farmers Federation yesterday. So too have the premiers: of Queensland, Mr Beattie; of New South Wales, Mr Carr; and of Victoria, Mr Bracks. And as for the shadow minister for trade, the person whose direct portfolio responsibility encompasses the FTA, my good friend Senator Stephen Conroy—who at the moment, I fear to say, in the corridors of this house is fighting a losing battle against the primitives in his own party—he was quoted in that great newspaper of record, the Great Lakes Advocate on 27 May this year as saying:

The Labor Party endorses the Free Trade Agreement with the United States.

This was confirmed at a public forum held in Taree last Thursday.

We have heard of Sir Henry Parkes’s Tenterfield speech; we can call this Senator Stephen Conroy’s Taree declaration.

Labor Senator, Stephen Conroy, Deputy Opposition Leader of the Senate in federal parliament, was making a whistle-stop visit to the North
Coast, aimed at fielding local concerns to the recently announced Australia-US free trade agreements, put into place by Mr Mark Vaile.

When asked if Labor supported the Free Trade Agreement, Senator Conroy said, “yes we do”.

May I say, good on you, Senator Conroy, wherever you are listening out there on the monitor. But I do not want to interrupt you from fighting your losing rearguard battle against the primitives in your own party because, against the sensible view of Mr Beattie, Mr Bracks, Mr Carr, Mr O’Connor, Senator Conroy and others of the Australian Labor Party, we have the newly resurgent strand of Labor primitivism so perfectly described on Lateline last night by my colleague Tony Abbott as ‘left-wing Hansonism’. And who better to embody that primitivist strain in new Labor—or should I say pre-modern Labor—than their star recruit, Mr Peter Garrett? Mr Peter Garrett last opined on this issue in the Australian Financial Review on 20 May this year in an article dripping with hostility to the very notion of free trade. In an article which he wrote under the headline ‘Environment pays dearly for free trade’, Mr Peter Garrett had this to say:

What this report failed to acknowledge is that, with our current laws and policies, economic growth is almost always accompanied by a commensurate increase in environmental degradation. Madam Acting Deputy President, Senator Ferris and Senator Macdonald, pause and reflect for a moment on that remark: ‘economic growth is almost always accompanied by a commensurate increase in environmental degradation’. So it is a zero sum gain according to Mr Peter Garrett, the poster boy of new primitive Labor. Every increment of economic growth is paid for by environmental degradation. That is the Hansonite approach embraced by the pre-modern Australian Labor Party in its latest dance with primitivism.

Where, may we ask then, is Mr Latham on this? Where indeed? Writing in this morning’s Australian, the respected commentator Paul Kelly has this to say:

From the day the FTA was announced, Mark Latham was hostile towards it. This was a visceral and immediate reaction. He has never said a good word about the deal since.

Quite simply, the opposition cannot arrive at an agreed position on one of the most vital questions of the day—whether Australia should take advantage of the unique opportunities now before us of unprecedented access to the largest market in the world. As to what those opportunities would mean for Australia, let me merely quote from one piece of evidence given to the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America, which has been doddering along over the last few months under the insouciant chairmanship of Senator Peter Cook. Mr Alan Oxley, one of the most respected experts on free trade and bilateral trade negotiations in Australia, had this to say in his evidence to the committee. Responding to a question from Senator Cook, Mr Oxley said:

You asked, Chair, what would be the downside for Australia if we rejected the agreement. We would probably be regarded as the most bizarre country in the world for having rejected a free trade agreement with the world’s biggest economy—an agreement that would actually give us access in agriculture, which is one of the most difficult areas, notwithstanding the fact that it is not perfect—when many other countries are lining up to have an agreement with them. I honestly do not know how any serious Australian government could justify that to the world at large.

I suppose, if you take Mr Latham’s position, you do not have to justify it to the world at large—what you do is hide. That is the way that Mr Latham is seeking to avoid confronting this issue. By putting a miserable two-page reservation of position as an appendix to the JSCOT inquiry—the most exhaustive
and, undoubtedly, the most competently chaired parliamentary inquiry into the free trade agreement that this parliament will conduct—setting his shadow ministers at war against the primitives and waiting to see who wins the toss, Mr Latham conceals his position with delay, obfuscation and indecision. There is no photo opportunity, you see, in the free trade agreement; there is merely policy substance. There is merely the opportunity to make a hard decision, which will be unpopular among certain constituent groups of the left-wing Hansonites and primitives, upon whom Mr Latham’s support depends. He hopes to get through this week, possibly the last of the parliamentary session, without showing his hand on this vital question.

This might be the last week of this, the 40th Parliament. If the Prime Minister decides to hold an election in August or early September, parliament will not sit again. It is simply not good enough for the Leader of the Opposition, the alternative Prime Minister of this country, to be playing chicken with the Australian people. They are entitled to know, now, before the parliament rises, where the Labor Party stands on this, where Mr Latham stands on this. Is he with the left-wing Hansonites? Is he with the primitives? Is he with the Peter Garretts, or is he with his shadow minister Senator Conroy, Mr O’Connor and the modernisers who are trying to drag the Labor Party into the 21st century, having lately succeeded in dragging it into the 20th century? We are entitled to know, before the parliament rises, how Mr Latham will resolve this issue. If, before the next sitting of parliament, the Australian people go to elect a new government, they are entitled to know exactly what a Labor government would do.

World Refugee Day

Senator KIRK (South Australia) (1.41 p.m.)—This week we celebrate the fourth annual World Refugee Day. For many years a number of African nations have been celebrating Refugee Day on 20 June but in 2000, following a special United Nations General Assembly resolution, this date was designated World Refugee Day. I have spoken in this place many times on various refugee issues and most frequently, of course, in relation to the Howard government’s so-called Pacific solution as well as its inflexible and unacceptable policy regarding the detention of children.

There are over 20 million refugees and displaced people in the world today. World Refugee Day is an important time for us to consider the ways in which we as a nation can further help to assist these people rebuild their lives. The theme of World Refugee Day this year was ‘A place to call home: rebuilding lives in safety and dignity.’ The UNHCR has said that, regardless of how it is celebrated, 20 June is a day on which we should all stop and think about the world’s refugees and extend to them our encouragement, support and respect.

In Parliament House this week we had the opportunity to see Actors for Refugees perform their show Club Refuge. It was a thought-provoking performance incorporating humour, stories and songs on the theme of refugees. The evening’s performance was particularly thought provoking, I found, when Aladdin Sisalem thanked the performers and attendees for their care and concern for refugees. I should mention that Mr Sisalem was a refugee on Manus Island for a period of 18 months, and he was the sole asylum seeker occupant of Manus Island for the past 10 months. Many of us saw him on television. On Monday night we were able to meet with him, hear his stories and hear him thank those people who were performing, as well as those people who were in attendance supporting the actors, for the concern and care they showed for refugees.
Senators also had the opportunity this week to attend a national forum on mental health and human rights where workers in the field and former detainees spoke about the mental anguish of detention—a detention that for many remains without any conceivable end. While we confront a system that urgently requires a new policy from this government—a policy that will ensure the humane treatment of all people who seek asylum in this country—we must also continue to work with the community to connect with the genuine compassion that so many people in the community feel. For my part, I am sponsoring a poster design competition for primary school students in South Australia. The object of the competition is for students in primary schools to draw or create a poster as a class which represents to them the contribution that refugees make to our community.

At a national level, the UNHCR is running an essay writing competition for Australian high school students. Many other venues around the nation are hosting similar events aimed at recognising the strength and the value of refugees in this country. I would like to take the opportunity to commend the UNHCR for its extraordinary commitment to improving the lives of refugees over the past 52 years. I would also like to give particular thanks to the UNHCR in Australia and applaud its continuing hard work in assisting those refugees who, unfortunately, remain a part of this government’s so-called Pacific solution.

In this regard I would also like to make mention of a motion in my name that was passed in the Senate last week. The motion said that we condemn the current immigration and detention policies maintained by this government. I said then and I say now that the government must acknowledge that it has presided over an immigration detention regime where the welfare, safety and health of children have not been the primary concern. This is a fact that was made abundantly clear quite recently in the Human Rights and Equal Opportunity Commission’s report of its inquiry into children in detention, entitled A last resort? That report echoed the many calls that have been made over the past few years for this government to release all children from detention. The commission’s deadline for the release of children from detention has well passed us by. Last week I urged the minister to remedy this situation, but still there has been no action. Again, I call on the Howard government to release all children from immigration detention in Australia and in the so-called Pacific solution immediately.

The release of children from detention is critical but, as the Human Rights and Equal Opportunity Commission report makes clear, it is only part of the solution. The immigration detention system in Australia is inadequate. The HREOC report sets out that, in order for Australia to properly discharge its international human rights obligations, significant changes must be made. This year the World Refugee Day theme is based on safety and dignity. With this in mind I call on the government to make changes to the immigration detention system for the future so that the human rights abuses and neglect highlighted in the HREOC report cannot happen again. It certainly will be of interest to me to see whether the government acts on any of the HREOC report’s recommendations and even on those resolutions that have been supported here in the Senate in recent times. If the recent ‘Australia says yes to refugees’ campaign by the current minister, Senator Vanstone, is any guide to these predictions, I fear that our calls will fall on deaf ears. On World Refugee Day in 2002 the then minister for immigration, Mr Ruddock, urged Australians ‘to think of those refugees who languish in appalling conditions in refugee camps around the world’.
I completely agree that refugees overseas are most certainly in need of our compassion and support. But I suggest that we should also perhaps spare a thought for those refugees who languish in the appalling conditions of the detention centres here in Australia. The current minister, Senator Vanstone, this year put out a press release glorifying Australia’s long and proud history of providing assistance and resettlement opportunities to refugees from around the world. However, in doing this she ignored the many asylum seekers who have arrived on our shores in recent years.

But World Refugee Day is about more than talking up the contribution to multiculturalism made by refugees to this country. As the theme for this year clearly highlights, World Refugee Day should be a time when the government and we as a community concentrate on practical ways to help refugees rebuild their lives in safety and dignity. I urge the government to put behind them the demonising propaganda of the past, to throw their past policies overboard—if I may say so—and to start afresh. I call on the government to put forward an act of good faith and to mark World Refugee Day this year by releasing all remaining children from immigration detention. I would like to conclude today with a quote by the present United Nations High Commissioner for Refugees, Mr Ruud Lubbers. In speaking on this issue Mr Lubbers has said:

We see on a daily basis the incredible courage and perseverance of refugees who have lost everything … This is why World Refugee Day should be—

for all of us—

a time to pause and think. Because if they refuse to give up hope, how can we?

**Health: Pharmaceutical Benefits Scheme**

Senator STOTT DESPOJA (South Australia) (1.50 p.m.)—On budget night back in 2002, when I was Leader of the Australian Democrats, on behalf of the Democrats I made very clear our immediate and strong opposition to the proposed increased budget measures of the PBS. That budget, as honourable senators may recall, in many respects was a clear grab for funds at the expense of some of the most disadvantaged people in our society, including those who are sick, those who are poor and—combined with the proposed changes to the disability support pension—those who are disabled. My concerns then and now relate to the impact of this price increase on those disadvantaged Australians, particularly the sick and the poor—a price increase that we are now led to believe the Australian Labor Party will be supporting.

At the time, although not with alacrity, the Australian Labor Party indicated that they would follow the Democrats’ lead on that occasion and would oppose the increases in the co-payment, thus preventing an increase in some essential medical expenses. We commended and welcomed their decision at the time, and that ongoing decision is something we have welcomed. However, it seems that things have changed. At the time, that government budget was designed to pay for national security at the expense of the security of some of the most disadvantaged people in our society. The intention, of course, was to claw $1.1 billion over four years from increases in the co-payments. As I mentioned in my budget-in-reply address and as my colleagues have since echoed on many occasions:

Who is going to stop getting their prescriptions filled because of a $1 increase in the concessional rate? Poorer Australians. Who is going to stop filling prescriptions because of a $6.20 rise in the non-concessional rate? Poorer families.

These savings are designed to come from impeding the use of the PBS by poorer Australians. We know for a fact from the gov-
ernment itself that at least half the revenue that it is expecting to make from the higher co-payments schedule will come from concession holders. I want the ALP to remember that figure. Half will come from concession holders—that is, pensioners, people who are already having difficulties paying for expenses in life let alone essential expenses such as medical.

I know that the Democrats copped flack at the time for our resistance—for daring to oppose this particular budget measure. And, yes, there was some talk of deals and compromise and negotiation at the time. Some even dared hint to the media that was the direction in which we would go. But we did not. We held the line, because for my colleagues and I this was an obvious, fundamental issue of fairness, equity and affordability.

We did offer the government alternative means of raising revenue. One example, of course, was the proposal to means-test the private health rebate—a policy idea that is still on the table if the government is looking for revenue, a policy measure that still assists the wealthier in our society. But unfortunately it was not taken up. It seems to be standard fare that we slug the poorer and more disadvantaged and we do not tend to touch the wealthy. Now it seems to be the line of the opposition as well, and I am saddened and angry to hear it.

As for the government, I recall at one meeting I attended one high-level member of government said to me, ‘But, Natasha, it’s only one dollar?’ For me that meeting and that comment crystallised just how out of touch some members of the executive and the government are. That conveys a lack of understanding. For some Australians one dollar is not that easy to find; in fact, it is incredibly hard to come by, particularly when we are talking about these expenses.

Let us not forget that the government knew in advance what would happen to the PBS budget. Let us not pretend that this was not a predictable blow-out and that the government had not had advice, particularly in relation to a couple of key medications that did result in the budget blow-out relating to PBS expenditure of one year. Let us not forget that later in the same year—a budget review revealed that growth in the cost of the PBS was actually less than expected. In fact, at the time, the cost of the PBS and medical benefit schedule in cash terms was expected to be $144 million less than forecast due to the ‘lagged impact of lower than expected expenses in 2001-02’.

The Australian Democrats have always supported savings measures for the PBS and we have indicated ways that that could be achieved. They are not new ideas in relation to better targeting and better education campaigns not only for doctors but pharmacists in relation to lower cost medications. There are a range of proposals that we put forward not only in 2002 but since. Just as we have always argued, any kind of radical change to the PBS should occur after a review and not, as it did on that budget night, as an ad hoc measure designed to address a blow-out that was predictable and indeed warned against.

Combined with changes under the free trade agreement to the PBS, it will not be surprising if Australians now expect a hike in the price of medicines. Once again, this will be as a consequence of coalition and now opposition collusion. No doubt this particular measure and this particular backflip will result in many already disadvantaged Australians being hardest hit. A spoonful of sugar ain’t gonna make this Labor Party backflip any easier to swallow! I ask the Labor Party to reconsider this decision in the hope that many Australians who depend on vital medications through the PBS will not be slugged with these additional costs.
Environment: Great Barrier Reef

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.56 p.m.)—I wish to conclude the debate on matters of public interest in the two minutes left to me simply to highlight some of the issues that were raised. I must say I had a great chuckle and it was a real hoot to hear Senator Mackay attacking one of Australia’s most respected journalists, Andrew Bolt, and Senator Mackay, of all people, calling upon Mr Bolt to make apologies to her and to other members of the Labor Party for truthful statements. I was also impressed by Senator Brandis’s speech on the free trade agreement. It really does show the hypocrisy of the Labor Party. I was also very moved by Senator Lees’s very thoughtful speech on the environment. I have to say there are some things that I do not agree with Senator Lees on, but it is quite clear that in this parliament, apart from members on this side, Senator Lees is one senator who does show a real understanding of the environment.

That does lead me to comment on the representative areas program on the Great Barrier Reef off the coast of my state of Queensland and to again highlight what environmental groups have been saying for many years—that this representative areas program is a great initiative. It clearly demonstrates the Howard government’s ascendancy in environmental matters. That representative areas program on the Great Barrier Reef has caused some harm, particularly to the fishing industry, which I administer in Australia. We have recognised that individual fishermen, fishing companies and individual businesses should not bear the brunt of these public good, environmental initiatives. That is why Dr Kemp and I and Senator Minchin are putting together a package which will provide structural adjustment for those fishermen and other businesses that are impacted upon by this very fine new environmental measure that the Howard government has embarked upon. It is a very good news story. It clearly demonstrates the Howard government’s fine and advancing environmental credentials in our wonderful country.

QUESTIONS WITHOUT NOTICE

Australian Federal Police: Investigation

Senator FAULKNER (2.00 p.m.)—My question is directed to Senator Ellison, Minister for Justice and Customs. In relation to the AFP inquiry into the leaking of the top secret ONA report Iraq: humanitarian dimensions to the Herald Sun columnist Andrew Bolt, can the minister assure the Senate that all of Mr Downer’s staff members, including any that might have left his office since the time of the leak, cooperated fully with the inquiry? Did any of Mr Downer’s then staff decline to be interviewed by the Australian Federal Police? Did Mr Andrew Bolt consent to be interviewed? Can the minister indicate whether Mr Downer agreed to provide all of his office phone records to the AFP to assist with their inquiries?

Senator ELLISON—This was a complex and extensive investigation. As I said to the Senate yesterday, it has been concluded. What Senator Faulkner is asking about goes to the operational aspects of that investigation. I will ask the Australian Federal Police and, if there is anything I can add, I will.

Senator FAULKNER—Mr President, I ask a supplementary question. Can the minister explain why the Howard government—quite properly—vigorously pursued the Wispelaere and Lappas cases but has remained entirely passive on the leak of this classified ONA report to Andrew Bolt? Why has this particular case been treated so differently? Why hasn’t the minister, or any of the minister’s colleagues, condemned the Melbourne Herald Sun journalist Andrew Bolt for publishing extracts from a top secret AUSTEO
code-worded ONA document? Why has the government been so silent on this matter?

Senator ELLISON—Senator Faulkner’s question is based on a false premise, and that is basically that there is a difference between this investigation and the Wispelaere investigation and others. The fact is that the Australian Federal Police carries out these investigations—the government does not. It is quite appropriate that that be the case. If it were to be any different, there would be a hue and cry from the opposition. In saying that there is any difference between the two investigations, Senator Faulkner is once again casting a slur on the Australian Federal Police.

Health: Pharmaceutical Benefits Scheme

Senator HUMPHRIES (2.03 p.m.)—My question is to the Minister representing the Minister for Health and Ageing, Senator Ian Campbell. Will the minister outline the Howard government’s commitment to the Pharmaceutical Benefits Scheme? Is the minister aware of any alternative policies?

Senator IAN CAMPBELL—Thank you to Senator Humphries for an important question. This issue has received a lot of publicity over recent hours because of Labor’s change of position on it, which the government genuinely welcomes. I think all senators know that the Pharmaceutical Benefits Scheme delivers significant benefits to all Australians, and particularly to concession card holders and other people on lower incomes. It gives all Australians access to world’s best, state-of-the-art medicines, as Senator Humphries would know: to cancer related treatments, diabetes drugs and drugs for arthritis and many other serious and chronic diseases. In fact the cabinet, only on Monday, agreed to list Ezetrol, which is a new cholesterol-lowering drug which will assist many people who suffer from high cholesterol and the risk of heart disease.

So we welcome the decision of the Labor Party—a backflip, as some have called it—on this measure. It will ensure that the Pharmaceutical Benefits Scheme does continue as a sustainable program. The contributions made by the federal government to assist people—particularly low-income earners and concession card holders—with their purchase of medicines has increased from around $1.2 billion early in the last decade to over $5.1 billion. That creates a significant benefit for people in their wellbeing, their standard of living and their hopes for living long and productive lives. It is an excellent program. But with such a massive increase—I think it has increased at roughly 13 per cent annually over the last 10 years—the government needed to take some decisions to ensure that it was sustainable, to ensure that the next generation could benefit from this excellent program. I think it is important to make the point, however, that patient contribution to PBS costs has fallen from over 20 per cent to 14½ per cent. The copayment scheme that we will seek passage of in this parliament over the next day will see still very low levels of patient contribution. It is a fantastic scheme.

There is another significant risk, particularly to people on low and average incomes—that is, the risk of the removal of the 30 per cent private health insurance rebate. This is a policy that we would like to see Labor do a backflip on, because there are in fact millions of families across Australia who receive the benefit of the 30 per cent rebate. The rebate has been described by Labor leader Mark Latham as bad economics, an appalling piece of public policy, a mad piece of public policy and unaffordable. Labor have refused to rule out the abolition of the private health insurance rebate. The policy has in fact given a $2 for $1 benefit to people who access health services. It has given support to the public health system, because 50
per cent of elective surgery now occurs in private hospitals. If the Latham policy of ripping out the 30 per cent rebate were to become law under a future Labor government, then there would be massive increases in the cost of insurance for families—$800 a year—and massive stress put back on an overly stretched public health system. (Time expired)

**Australian Federal Police: Investigation**

**Senator WONG (2.08 p.m.)—**My question is to Senator Ellison, Minister for Justice and Customs. Minister, I refer to the Federal Police inquiry into the leaking of the top secret ONA report *Iraq: humanitarian dimensions* to the journalist Andrew Bolt, which, according to a statement issued by the minister last Friday, has now been completed. Can the minister clarify precisely what the inquiry concluded? Did it find, as the minister stated yesterday, that there had been ‘absolutely no evidence’ connecting the Minister for Foreign Affairs and his office to the leak or is it the case, as he stated to the *Sydney Morning Herald* last Friday, that there was no direct admissible evidence or is his department right when it advises him that the AFP found that there was insufficient evidence? Which of these three explanations would the minister now like to finally adopt?

**Senator ELLISON—**I have answered this question. Very clearly, the finding was that there was insufficient evidence to connect any of the recipients of the report to Mr Bolt. There is no evidence, and that is the sum total of it. The question is what was the result of the investigation, and that is the answer.

**Senator WONG—**Mr President, I ask a supplementary question. I note the minister did not clarify whether the answer is ‘no evidence’ or ‘insufficient evidence’. Minister, given that the Federal Police cannot find the leaker, isn’t there a strong case under section 79 of the Crimes Act to prosecute the receiver and disseminator of top secret information? Will the government now request the Director of Public Prosecutions to investigate this matter?

**Senator ELLISON—**We normally ask the Australian Federal Police to investigate matters which relate to Commonwealth law, and in this case that has been done. Unless Senator Wong can come up with any further evidence of any sort, that is where the matter rests. The investigation has been carried out—it was a lengthy one, a complex one—and the Australian Federal Police has now made a determination on the matter.

**Senator Conroy interjecting—**

**The PRESIDENT—**I ask you to withdraw that unparliamentary remark.

**Senator Conroy—**Which one?

**The PRESIDENT—**I heard what you said and it has been classed and ruled by other Presidents to be unparliamentary. I ask you to withdraw it.

**Senator Conroy—**I withdraw anything you think I said. I actually do not know what it is I said, but I withdraw it.

**Howard Government: Economic Policy**

**Senator WATSON (2.11 p.m.)—**My question is directed to Senator Minchin, Minister for Finance and Administration. How have ordinary Australian families benefited from the government’s strong economic policies, and is the minister aware of any alternative approaches that could put the economic security of Australian families at risk?

**Senator MINCHIN—**I thank Senator Watson. One of the great achievements of the Howard government is the fact that we have got the budget back into surplus and slashed Labor’s debt. That has allowed us to direct resources where they are needed—into schools, hospitals, roads and families—
instead of paying interest on Labor’s debts. We were paying some $8 billion on debt when we got in. The alternative to that approach is a Labor Party and an opposition leader who practise what can only be described as voodoo economics that would take us back to those bad old days of Labor’s deficits, debt and lots of red ink. We saw this yesterday with this extraordinary backflip on the PBS copayment, which is really just an admission by the ALP that they cannot pay for their promises. That is all that yesterday’s announcement was about.

We saw another example of this some 10 years ago when Mr Latham, the Leader of the Opposition, was mayor of Liverpool council in the western suburbs of Sydney and wrecked the finances of that particular council. Mr Latham is the least experienced candidate for Prime Minister at least since World War II. He was mayor of this council between 1991 and 1994. It is the only management experience he has ever had and he wrecked the finances of that council when he was there. He got up in the parliament on 1 June to defend his abysmal record as mayor he felt so sensitive about any criticism of his role as mayor, but the Daily Telegraph yesterday exposed the inaccuracies in his defence. It reported that Mr Latham actually left a deficit of $2.7 million in 1994, when he said he left a surplus of $1.1 million. And the $2.7 million deficit was just the first sign of the financial shambles caused by Mr Latham’s $36 million spending spree on fountains and other largesse for this particular council. In 1993, eight months before he finished as mayor, the council was presented with council budget papers which revealed the deficit was scheduled to blow out to $11.4 million by June 1995, a level his deputy mayor, Alex Sanchez, who now works on Mr Latham’s staff, warned could not be sustained. He now makes the claim that he is not responsible for—

**Senator Brown**—Mr President, I rise on a point of order. I refer to your ruling of 1 March of this year about questions seeking debate about policies. That has been totally circumvented. There is no reference to policies here. We are getting history. I ask you to bring the minister to the question and within the ambit of your ruling.

**The PRESIDENT**—Minister, I would ask you to return to the question. You have one—

**Senator MINCHIN**—I was asked about alternative approaches and I was describing an alternative approach.

**Senator Faulkner interjecting**—

**The PRESIDENT**—Order! There is too much noise in the chamber today and too many interjections from both sides. I ask the minister to return to the question.

**Senator MINCHIN**—In relation to the alternative approach presented by Mr Latham, the opposition leader, Liverpool council’s finance chairman in June 1996, ALP alderman Wendy Waller, left no doubt who was responsible for the shambles in the council. She blamed ‘a giant stuff-up’ by Mr Latham. The recent public inquiry into the effectiveness and governance of the council confirmed that account. Testimony from PricewaterhouseCoopers, the auditors, revealed that Mr Latham’s capital works spending was responsible for the deterioration in Liverpool council’s financial position. The resultant deficit was among the highest that this accounting firm had ever experienced.

**Opposition senators interjecting**—

**Senator MINCHIN**—They are very sensitive about it, aren’t they, Mr President? In his 25-year career as an auditor—

**Senator Brown**—Mr President, I rise on a point of order. I want to see question time used to give information of a proper nature.
The minister is clearly flouting your ruling. He is clearly not adhering to your ruling. He is not answering the question, let alone referring to the policies of the current Labor Party.

The PRESIDENT—It has always been the practice, both from my rulings and others, and it has been accepted that you can be asked and answer a question about alternative policies. The ruling I gave this year was with regard to supplementary questions that were framed incorrectly and were asking directly about alternative policies without asking a question. You would recall that. In this particular case, I believe the minister has answered the question and is now addressing any alternative policies, which is quite within my ruling and other rulings made by previous presidents.

Senator Faulkner—Does your ruling in relation to alternative policies also relate to the alternative policies of Piers Akerman in the Daily Telegraph? Is that what ‘alternative policies’ means? That is what you are ruling.

The PRESIDENT—You know I cannot direct ministers how to answer questions.

Senator MINCHIN—I would like to quote not Piers Akerman but Mr Frank Heyhoe, an ALP member who organised the money to send Mr Latham to university. About Mayor Latham, he said:

Recklessness, at times, I think is a good word to fit Latham. I mean, in Liverpool Council he went on a spending spree of some capital works program of some $36 million. The deficit when he left the Mayoral office was $15.9 million. Now the ratepayers had to pay that back and are still paying it back at $4.6 million a year. To my mind, that is reckless.

If Mr Latham cannot manage the budget of a local council, how on earth can he manage the budget of the biggest financial entity in the Southern Hemisphere, the Australian government?

**National Security**

Senator ROBERT RAY (2.18 p.m.)—My question is to Senator Hill, the Minister representing the Prime Minister. Given that the leaked top-secret AUSTEO ONA document was code-worded in such a way as to indicate that it contained material supplied by overseas intelligence agencies, has the Prime Minister, who has responsibility for ONA, conveyed the government’s regrets and apologies to those agencies for the unauthorised disclosure of their material? Has the government indicated to those agencies what steps it has taken to ensure that there will not be a repeat of such a damaging disclosure?

Senator HILL—The question is, of course, premised on conclusions that have not as yet been established. Having said that—

**Opposition senators interjecting**

Senator HILL—Pardon? No, I do not know. On what basis does Senator Ray assert that the code word represents international material? I do not know the basis of that. He is asserting it but he has not sought to make his case. He also assumes—

**Opposition senators interjecting**

The PRESIDENT—Minister, I would ask you not to respond to interjections and to address your remarks through the chair.

Senator HILL—Whilst I know Mr Bolt to be an honourable man—

Senator Robert Ray interjecting—

The PRESIDENT—Order! Senator Ray, you have asked your question.

Senator HILL—As I know him to be an honourable man, I for one would be most surprised if he was utilising a document that was subject to a high level of classification. In fact, I could not imagine any reputable Australian journalist behaving in that way. But, in relation to whether the Prime Minister has taken action specifically in those
terms, Senator Ray, notwithstanding that the case has not been made out for him to do so, I will refer that to the Prime Minister.

Senator ROBERT RAY—Mr President, I ask a supplementary question. When the minister refers to Mr Andrew Bolt as a honourable man, is it an honourable thing to publish top-secret material in newspapers? Minister, if that is an honourable action, are you describing Mr Wispelaere and Mr Lappas, who are facing or undergoing jail sentences for their treachery, as honourable people?

Senator HILL—If someone acts unlawfully they will suffer the consequences of their unlawful conduct. Whilst I know that the Labor Party does not worry too much about smearing reputations, what Senator Ray is alleging is that Mr Bolt has behaved unlawfully, because he is comparing him with Wispelaere et cetera. I would respectfully suggest that that is inappropriate.

Howard Government: Advertising

Senator MURRAY (2.21 p.m.)—My question is to the Special Minister of State, Senator Abetz. Minister, is it true that the government continues to process and approve its government advertising in terms of the 1995 guidelines? Is the minister aware that the Senate has confirmed that those guidelines should be superseded by the principles and guidelines set out in appendix 1 of report No. 12, 1998-99 of the Auditor-General? Why will the government not accept those updated Auditor-General guidelines? What processes does the government follow to ensure that any guidelines are adhered to?

Senator ABETZ—We as a government have been following guidelines that were instituted by the previous Labor government and, might I add, followed by various state Labor governments around the country. I am aware that the Auditor-General has made some comments and suggestions in relation to the guidelines for government information campaigns. However, as the honourable senator and senators in this place would be aware, one of the suggestions was, for example:

Material should not be liable to misrepresentation ...

That was one of the guidelines. We as a nation had to face 25 months of misrepresentation of the Pharmaceutical Benefits Scheme by the Australian Labor Party only to see them do a backflip 25 months later. So, under the Auditor-General’s guidelines, anybody can misrepresent what the government is seeking to do and the Australian Labor Party in their actions on the Pharmaceutical Benefits Scheme have shown a classic example of misrepresentation.

Another example is the free trade agreement, where the Australian Labor Party, Senator Mackay and others busily wrote letters to the editor condemning the free trade agreement only then to vote for it in the parliament. Indeed the guidelines even suggest that the misrepresentation should not be, for example, party political. Something that I think both sides of the chamber, other than a small section, are agreed on is that Defence Force recruitment is not political advertising. Yet it would be interesting to hear from a pacifist party, like the Australian Greens, whether or not they would believe that Defence Force recruitment is not political advertising. The possibilities for misrepresentation are basically as endless as the devious minds of those opposite, who have gone out to seek to misrepresent anything the government have done only to be shamed into doing a backflip some 25 months later, as they did with the Pharmaceutical Benefits Scheme. The proc—
esses that we adopt as a government are as per the guidelines that were adopted, might I add, when Senator Faulkner, Senator Ray and Mr McMullan were, in fact, cabinet ministers.

It is quite ironic that the guidelines that the Australian Labor Party thought were appropriate when they were in government—the ones they put in place, the ones they authored—now, all of a sudden, after a few years in opposition, are no longer acceptable and we need some new guidelines. Indeed, Mr McMullan was the co-author of those, as well as being part of the Labor government at the time, and, of course, he now sees that those guidelines are inappropriate.

One thing that Senator Murray can be assured of is that we will not do a sleazy Bill Hunter ad like the Working Nation ad where Bill Hunter, the frontman for that, was then seamlessly put into the Labor Party political campaign advertisements for the 1996 election campaign. We as a government, I assure you, will never do that, because when there are guidelines in place we actually abide by them.

**Senator MURRAY**—Mr President, I ask a supplementary question. I thank the minister for his answer. Mr Howard was quoted by the Mercury newspaper as saying, in question time yesterday, that all advertising would meet the guidelines set by the Auditor-General, so perhaps the minister would be happy to comment on that. With respect to the 1995 guidelines that you say you adhere to, is the minister aware that at estimates on 25 May I asked Mr Greg Williams, who provides expert advice to the committee approving government advertising, a series of questions on authorisations? Are you aware that a question I asked was this one:

Is there a minister or a person representing the minister who signs off the project and signs that it is in accord with those guidelines?

Mr Williams answered:

There is no formal process there, no.

Minister, why does this government say it follows the guidelines but it does not have a formal process for signing off and formally authorising that the advertising complies with the 1995 guidelines?

**Senator ABETZ**—The Australian Democrats really do like the bureaucracy and the paperwork in relation to every aspect of government activity. We assure the Australian people that we abide by the guidelines. The guidelines are public; anybody can see them. Our information campaigns are public; everybody can see them. As a result, every single Australian can put the guidelines next to what they see in the information campaign and marry the two together. Unlike the sleazy Labor Party Bill Hunter ads of Working Nation—which saw him seamlessly being transferred into Labor Party political campaigns; we would never do that—can I assure Senator Murray that we have abided by those guidelines and I would invite anybody to pick any of the information campaigns and say where they have not married up. *(Time expired)*

**Howard Government: Advertising**

**Senator McLUCAS** *(2.28 p.m.)*—My question is to Senator Abetz as the Special Minister of State and as the chair of the ministerial committee on government advertising. Can the minister confirm that the government has been reviewing and focus group testing advertisements produced in collaboration with television and advertising industry lobby groups? Can the minister confirm that the advertisements it has been reviewing for these lobby groups are in relation to childhood obesity? Can the minister confirm these lobby group advertisements on childhood obesity are timed to be released with the Liberal Party’s election policy on childhood obesity? Why is the government seek-
ing, through the conduct of its own focus group testing, to influence or control the content of these advertisements produced by TV and advertising industry lobby groups?

Senator ABETZ—I assure the senator opposite and all senators opposite that we, as I said in answer to Senator Murray’s question, will not be engaged in the sort of activity that Senator McLucas’s party was engaged in before 1996—using government information campaigns to help the party political campaign. I would have thought that most people in this country would accept, for example, that domestic violence is a problem. Indeed, the Labor Party chided us for not bringing the advertisements on earlier. But, of course, whenever Senator Faulkner and the Labor Party do their spending analysis of government communications, guess what they do? They include the domestic violence campaign to condemn us, although they asserted we should do it.

Similarly, there are other important government campaigns, such as Tough on Drugs. I know some of you guys opposite are a bit soft on that but we as a government are tough on drugs and we make no apologies for that. We also have an anti tobacco smoking campaign and we make no apology for running that one either. Childhood obesity is similarly a health issue which we as a government are very concerned about.

Senator Chris Evans—They will all be running around the flagpole.

Senator ABETZ—We have an interjection. I know we are supposed to ignore interjections but I welcome the initiative of having Australian flags at schools and encouraging young people to run around in the playground to overcome the issue of childhood obesity. The Australian Labor Party are just not capable of grasping that there are occasions where it is appropriate for government to engage in information campaigns for the wellbeing of the community. If it were a Working Nation type advertisement, with Mr Bill Hunter being seamlessly transferred into the Labor Party ads, I would fully agree that that would be inappropriate and in breach of the guidelines. But that is Labor’s legacy, not ours. Indeed, in the eight years that we have been in government, our government information campaigns have been based on informing the Australian people of their rights and responsibilities to ensure that they can avail themselves of many of the benefits.

We also try to change behaviour in areas such as stopping smoking. It is quite disgraceful for the Australian Labor Party to keep asserting that our anti-tobacco campaign is somehow a party political campaign—the same with our Tough on Drugs campaign and our citizenship campaign. Above and beyond all that, the greatest hypocrisy of all from Labor is that if they were to ever win government they have already announced five brand-new campaigns, three of which—

Senator Faulkner—What about the question?

The PRESIDENT—Order! Senator Faulkner, you know that interjections are disorderly.

Senator Faulkner—Mr President, it is true that you correctly called me to order for interjecting, ‘What about the question?’ so now I will take a formal point of order and ask you, ‘What about the question?’ This minister has spoken for nearly four minutes and waffled on about precisely nothing to do with the very important and specific question that was asked of him by Senator McLucas. I thought you, Mr President, were obligated to ensure that this minister adheres to the standing orders and at least makes some attempt to answer the question. If he does not know and has not got a clue, he ought to take the
question on notice. This is an abuse of the Senate and its standing orders.

The PRESIDENT—Senator, you know as well as I do that I cannot direct a minister how to answer a question. I have heard part of his answer and it has been relevant. He has 27 seconds to complete his answer if he wishes to do so.

Senator ABETZ—Part of the Labor Party problem—and they still have not woken up to this—is that I chair the Ministerial Council on Government Communications but I do not initiate campaigns. If they wanted advice in relation to obesity the question should have been asked of the Minister for Health and Ageing.

Senator McLUCAS—Mr President, I ask a supplementary question. I did direct my question to Senator Abetz as Chair of the Ministerial Council on Government Communications and I think he has a considerable responsibility in that area. I note that he did in no way deny that his government is collaborating with advertising lobby groups to develop this campaign. Can the minister table in the Senate the agreement or understanding between the Howard government and the TV and advertising industry lobby groups regarding these advertisements? Given the political nature of the debate and the timing of the advertisements so close to an election, why shouldn’t the Australian public see these advertisements as more political advertising for the Liberal Party but this time paid for by the television and advertising industries rather than by the taxpayer? Can the minister assure the Senate that the full value of the advertisements will be disclosed as political donations by the industry lobby groups and the Liberal Party under section 305B of the Commonwealth Electoral Act?

Senator ABETZ—I thought I gave Senator McLucas the out before—I do not initiate these campaigns. Whether that sort of focus group work is being undertaken I have no idea. Those sorts of questions need to be asked of the Minister for Health and Ageing but she repeats her question and in it she asks about more political advertising. Let the Australian Labor Party get up here and identify whether anti-smoking, anti-drugs and citizenship campaigns et cetera are somehow political advertising and then let them explain to the Australian people the five campaigns that they have already earmarked that they would run—might I add, not surprisingly, that three of them are uncusted, as is the want of the Labor Party. Not only would they run all the campaigns that we are running but they would in fact be building on them with an extra five campaigns. In relation to other organisations supporting the government, I am not sure if they will but once the Australian Education Union declares all its advertisements—(Time expired)

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from the Republic of Chile, jointly led by Senator Hernan Larrain Fernandez, President of the Senate of the National Congress, and Deputy Pablo Lorenzini Basso, President of the Chamber of Deputies of the National Congress. With the concurrence of honourable senators, I invite both presiding officers to take seats on the floor of the Senate. I warmly welcome the delegation to the Australian parliament and in particular to the Senate chamber. I think this may be the first time that we have had the honour of having a speaker and a president from the one country sitting with the presiding officer in the Senate.

Honourable senators—Hear, hear!

Senator Fernandez and Deputy Basso were seated accordingly.
QUESTIONS WITHOUT NOTICE
Environment: Water Management

Senator LEES (2.37 p.m.)—My question is to the minister representing the Minister for the Environment and Heritage, Senator Ian Macdonald. Minister, as you know, the COAG meeting on Friday is going to have to make some very tough decisions about the national water initiative. I ask: will states have to identify how and where they will find their contribution to the 500 gigalitres in water terms or will they have to make their contribution financially and then leave it to the Commonwealth to determine where the water comes from? Secondly, will the Commonwealth require that any water savings in any state gained from irrigation upgrades that that state has been responsible for are left in the river and/or that water licences acquired by state governments are left in the river until we reach that 500 gigalitres? Finally, will the Commonwealth ensure that the measures designed to save the river and improve water quality, such as the salt interception schemes, do not do more harm than good?

Senator IAN MACDONALD—I listened very intently to Senator Lees’s speech during the matters of public interest before question time and I was particularly interested in the comments she made on salt interception.

Senator Patterson—And you complimented her.

Senator IAN MACDONALD—In fact, as Senator Patterson mentions, I complimented you lately about that.

Senator Carr—You must have a huge workload!

Senator IAN MACDONALD—I was here on duty—and it is an imposition, Senator Carr, except when you hear speeches like Senator Lees’s, which was very different to Senator Mackay’s speech which spent 20 minutes attacking one of Australia’s respected journalists. Senator Mackay’s speech was a real hoot. Senator Lees’s speech was very interesting on the matter of salt interception. I had not heard of that before in all of the meetings I have attended on the Murray-Darling Basin Commission, the Murray-Darling Basin initiative and the Living Murray initiative. It is something that I have made a note to look into, Senator Lees. I guess you will understand from that that I cannot answer whether those things will be looked into, but I am quite sure that they are sensible matters and that they should be looked into.

In relation to the other questions that you have raised, I understand your passion—which is a passion shared by South Australian senators on this side of the chamber—about the difficulties with the Murray-Darling Basin system, the closure of the Murray River and water for Adelaide. Senator Lees and senators from Adelaide on this side of the chamber well understand and are concerned about those issues. Equally, senators on this side of the chamber who come from up along the Murray-Darling Basin have very firm views on some of those matters as well.

On Friday the Prime Minister of our nation and all the state premiers will be discussing a national water initiative. You will appreciate that this government, the Deputy Prime Minister particularly and the Prime Minister, have been very keen to get a national approach to water. In the past, I have to say, perhaps with some respect, that the states have not managed the river systems well. They have not managed water well. I guess it is always easy to be clever in hindsight, but it is quite clear now that our water resources, particularly in the Murray-Darling Basin system, have been grossly overallocated in the past. It is now a question of how
to retrieve that situation and who should pay for it.

Since this initiative was first raised by the Prime Minister—over a year ago, I think it was—a lot of work has been done by officials. I think it would be inopportune and not helpful for me to try and anticipate what the premiers and the Prime Minister might discuss on Friday. Certainly from a Commonwealth point of view we understand that something needs to be done. I heard you say in your speech—and it is an issue that has been raised by many others—that if the states will not agree to a sensible proposition then perhaps it is time to look at some other means. You talked in your speech about the Commonwealth using its financial power to get results. You also raised the issue of changing the Constitution. That is, again, an issue that many people are starting to talk about. We certainly hope that the states will be sensible and responsible in their approach on Friday. I know the Prime Minister is very keen to progress this. We see it as one of the very big environmental issues. This is a government that is serious about the environment. We have done many practical, positive things about the environment and we certainly want to continue that with the national water initiative.

**Senator LEES**—Mr President, I ask a supplementary question. Minister, surely we can ask what the specific objectives of the meeting are going to be. Are we going to hear about where this water is to be found and how this water is to be acquired, as well as about any compensation scheme for farmers? To give you a specific example, SA Water has apparently now acquired around 12 gigalitres by purchasing licences from the lower swamps at the lower end of the Murray. It is reported that this water is to be on-sold for household and other commercial purposes rather than being left in the river. So I ask: is it a priority of the Commonwealth to ensure that if state governments acquire water they make sure that it stays in the river, at least in some sort of planned way, as their contribution to this 500 gigalitres rather than prioritising making a profit from trading water?

**Senator IAN MACDONALD**—The key features of the national water initiative include secure and nationally compatible water access entitlements; and accountable outcomes-focused provision and management of environmental water. You would be aware, Senator Lees—and I am sure you would have read this—that a discussion paper on a range of options for the key elements of the national water initiative was circulated in March, ahead of the stakeholder consultations in late May and early April. The actual work that the South Australian government has done, which you rightly acknowledge, is currently an issue, constitutionally, for the states. It is something that unfortunately the Commonwealth cannot legislate about. But, through the national water initiative, we want to make sure that all of the states do address the sorts of issues which you have spoken about the South Australian government having addressed.

**Centrelink: Overpayments**

**Senator FORSHAW** (2.45 p.m.)—My question is directed to Senator Patterson, the Minister for Family and Community Services. Further to my question yesterday, can the minister confirm that, even though families did not request a one-off $600 payment from the government and even though the money has been directly credited to their accounts without even an explanatory letter, the minister regards any errors or overpayments to be the fault of families not updating their records and potentially fraudulent? Minister, isn’t the problem the fact that you have thrown your taxpayer funded pre-election bribes at every family you happen to
have bank account details for without any regard for their eligibility? Isn’t this solely your fault? What are you going to do about it?

The PRESIDENT—I remind you, Senator Forshaw, to address senators through the chair.

Senator PATTERSON—I thank the honourable senator for his question and remind the Senate that we have spent nearly $4.9 billion over the five years of the third Commonwealth-state disability agreement. Around $2.1 billion is for employment assistance and $2.8 billion is available from the Australian government to the states and territories for other services. That is a $1.6 billion increase on the last agreement.

We do have some other benefits for people with disabilities but, because of the fact that the opposition has not supported this in the Senate, these reforms have stalled in this place. These reforms are about increasing support and employment opportunities for people who have the capacity to work at full award wages. It is not about people with severe, profound disabilities; it is not about people who cannot work at full award wages. The government recognises that there are people with a vast range of disabilities who receive disability support pensions. These reforms protect those people who cannot work but they also assist those who are able to work for 15 hours or more a week at full award wages. These are people who are capable of part-time employment, and they should be assisted to achieve this. These changes would only apply to new disability support pension applicants; people who currently receive disability support payments would continue to do so under the current rules. They would be eligible for any support under these reforms.

These proposed changes offer the increased support that the Leader of the Opposition has called for. The Leader of the Opposition said in February this year, ‘You won’t get people with a mild disability into good and lasting jobs unless you invest in them.’ Somebody needs to tell Mr Latham that there is $258 million waiting to be invested in people with disabilities if we pass these reforms. That is what we need to do:
Mr Latham said he wanted serious and sensible policies with regard to mutual obligation in the area of disability pensions. I can go through a list of times when he has said that, but we seem to have whitewashed that. If the Leader of the Opposition was true to his word when he said, ‘If the Howard government does something good for this country I’ll be supporting it,’ then he would be supporting this legislation.

The Labor Party should agree to pass the legislation today. I have been encouraged by Labor’s backflip on the Pharmaceutical Benefits Scheme. It only took them two years to get there—two years to make a decision. I was heartened to hear Mr Roger Price, the member for Chifley, this morning. When specifically asked whether there would be apprehension now in holding up the DSP reforms he said, ‘I think we should look at everything that we’ve held back in the past.’ He went on to say that governments should be able to govern. On this occasion, Roger Price is right. Mr Latham, come on down and support this legislation. Price is right—come on down! There is $258 million to support people with disabilities—$258 million to help these people get back into the work force. Labor was clearly divided on the PBS. It is clearly divided on the FTA. It is clearly divided on tax cuts. What I want to know is: is it divided on supporting people with disabilities? Mr Latham needs to come on down and support this legislation which will support people getting back into the work force.

**Centrelink: Debt Recovery**

Senator JACINTA COLLINS (2.51 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. Does the minister recall saying on 9 March this year:

It is absolutely vital in a system which is means tested that people who receive benefits from the taxpayer receive no more and no less than what they are entitled to and receive the same amount as people in similar circumstances.

If she truly believed that back in March, why has her office instructed Centrelink staff to suspend all debt recovery, including family payment debt recovery, until after this federal election?

Senator PATTERSON—Again, Senator Collins gives me the opportunity to tell Australians about what we have done for Australian families. We are going to give a $600 increase in family tax benefit per child for families who are eligible for family tax benefit this year. They will get a $600 increase—and in fact they have had it since last Wednesday, and I think payments were completed last night. Two million families with 3.5 million children will get the payment. Senator Collins knows, and it was clearly stated in the budget papers, that when people put in their tax returns they will get their tax rebate and in September there will be a reconciliation for those people and the majority of families will get a $600 increase in family tax benefit A for this tax year and every other tax year. Labor has failed to commit to that increase into the future years beyond the next financial year. Mr McMullan, when he was asked whether he would guarantee the $600 increase past next year, failed to do so. On the 7.30 Report Mr Latham was asked whether he could guarantee that families would not be worse off. Do you know what he did? He failed to tell Australian families that they would not be worse off. I remind people that because we have run this economy in a way that—

Senator Jacinta Collins—Mr President, on a point of order: the minister is not being relevant to my question. The question was: has she suspended debt recovery?
The PRESIDENT—Senator, I will say it again: I cannot direct a minister how to answer the question. She still has two minutes and 24 seconds to answer that question and I am sure that she is going to answer your queries.

Opposition senators interjecting—

The PRESIDENT—Order! Perhaps if there is a little less noise in the place we can hear what the minister has to say.

Senator PATTERSON—It was very clear in the budget and the budget papers about how we would deal with the additional $600 for this financial year. I would have liked to have been able to roll it out earlier but there are huge system changes required and we will not know whether people have an overpayment and whether they will have any payment to give back to the taxpayer if they have received more than they are entitled to during the year until we actually put the information in about their entitlements to the additional $600. Australian families need to remember that that increase of $600 is not guaranteed by the Labor Party past the next financial year. You can argue all you like but I can say to Australian families that they have already had, on average, $1,200 per family—$600 per child—put into their bank accounts over the last week. They will get a $600 increase in family tax benefit A this year and each financial year that ensues. The Labor Party will not guarantee that past the next financial year.

Senator JACINTA COLLINS—Mr President, I ask a supplementary question. In asking a supplementary question I note that the minister has not denied that her office has instructed Centrelink staff to suspend all debt recovery until after the federal election. Can the minister confirm that the government has recovered more than $1.5 billion of family payment debts in the last three years and $39 million in debts from pensioners in the last year? Can the minister explain the policy rationale for this massive program of clawback being suspended for the few months before the election? Why is the government suspending debt recovery for blatantly political purposes with the clear intention to reinstate clawback immediately should it win the election?

Senator PATTERSON—I have told the Senate about the measures that will be taken to implement the increase of $600. I also would ask Senator Collins whether she actually looked carefully at the payment. I think Senator Bishop was absolutely taken aback the other day when I said that, in compliance and fraud, we have now actually saved $44 million a week in fraud and—

Senator Conroy—Mr President, I raise a point of order. The minister sat down with over a minute to go last time without answering the direct question. She has got the direct question again and she is continuing to not answer whether she has instructed her department to stop debt collections. It is a very simple and precise question. I ask you to draw her to the question.

The PRESIDENT—Senator Patterson, you have half a minute yet to answer the supplementary question. I would remind you of that question.

Senator PATTERSON—Unlike Labor, who failed to get back money from people who received more than they were entitled to and who failed to give people top-ups to which they were entitled, we have ensured that as far as possible people get the benefits to which they are entitled, no more and no less.

Health: Pharmaceutical Benefits Scheme

Senator ALLISON (2.57 p.m.)—My question is to the minister representing the minister for health. Minister, why are you persisting with the 30 per cent increase in the PBS charges for the sick when you have to-
tally failed to contain drug costs with measures that you promised years ago? Why is the government not using more price-volume agreements with manufacturers so that when sales of particular drugs increase the price goes down? Why isn’t the government encouraging price competition between generic manufacturers? Why have there been no regular reviews of the cost effectiveness of listed drugs? Why aren’t you tendering out wholesaling of drugs as you promised to do two years ago? Minister, why are you slugging the sick and the elderly when you cannot even make the most obvious cost saving reductions on the PBS?

The PRESIDENT—Senator, I would remind you, as I have other senators, that when you frame your questions you should ensure that the questions are asked through the chair and not directly to the minister.

Senator IAN CAMPBELL—It is a very important question. The Australian Democrats will need to explain to the community over coming days and I suspect, more importantly, over coming years just why they will allow the Pharmaceutical Benefits Scheme to be put at risk. What the government committed to 25 months or so ago—

Senator Carr interjecting—

The PRESIDENT—Order! Senator Carr, come to order!

Senator IAN CAMPBELL—Now, after 25 months, the Australian Labor Party have recognised the same importance of this policy. We welcome that. It was never an easy decision for the government to take and it clearly was not an easy decision for the Australian Labor Party because it took them 25 months to get to it. But the Australian Democrats, unlike the coalition government, will never be faced with the hard decisions that need to be made in government. They will always be populist; they will always go for the populist line. They will have to explain to the Australian people why they voted against the Pharmaceutical Benefits Scheme reform.

As I said earlier in response to a question from Senator Humphries, the reason we are doing this is to ensure that people on lower incomes, people on middle incomes and people who hold concession cards can, with confidence, know they will receive the sort of benefit that is evident from the Pharmaceutical Benefits Scheme through the support we give to making those drugs available. As I have said, people on concession cards will pay a very small amount for very expensive drugs. The average contribution to the cost of drugs is down to 14½ per cent—that is what the patient contribution is on average. It is a lot lower than that for people on concession cards.

The Commonwealth government, now with the support of the Australian Labor Party, will ensure that those benefits—that is, delivering the drugs that help cancer patients and that help people suffering from diabetes and those who have high levels of cholesterol and who need drugs like ezetrol, which has just been put onto the list—are delivered. This will also help people on low and middle incomes to get benefits from the scheme. The Commonwealth is committed to ensuring that people on low incomes can get the very best medicines in the world at affordable prices, and it now seems to be only the Australian Democrats who want to undermine that strong policy commitment. They want to find the easy way out; they want to pretend that there is—

Senator Sherry—Off message, Ian! You need them for that deal on budget measures.

Senator IAN CAMPBELL—Not on this one! We welcome the Australian Labor Party’s decision. Senator Minchin explained why they had to make it: they were in all sorts of trouble over their costings. But, for
whatever reason, it is a good decision. It took them 25 months to get to it but they got there after all, so we welcome it.

Senator ALLISON—Mr President, I ask a supplementary question. If the minister does not know the answers to the questions I raise, I ask him to take them on notice and get back to me. Can the minister honestly claim that doctors, pharmacists and consumers are routinely informed when cheaper, non-brand medications are available that are just as effective? Isn’t it the case that your government will not tackle pharmaceuticals? If not, then why would you not at least look at preventive and alternative non-pharmaceutical approaches to health conditions instead of expensive drugs? If the government is already prepared to shift the costs of medications to those who can least afford it, what is the government going to do when prices for medications increase when the FTA comes into effect?

Senator IAN CAMPBELL—I did answer the question. The reality is that the Australian Democrats have got to find a way to justify a silly decision that they have taken. The government, of course, has put in place programs to ensure that generic medicines are available quickly and effectively for people who want to avail themselves of them. Pharmacists around Australia are already advising their customers as to where generic medicines are available. Most of the list that Senator Allison read out are things that the government is doing and has been doing for many years. What we are doing now is ensuring that the benefits of the Pharmaceutical Benefits Scheme, which is an Australian government program recognised as a world leader, is sustained and available for low-income people well into the future.

Senator Hill—Mr President, I ask that further questions be placed on the Notice Paper.
meet the immediate needs of internally displaced people in Darfur. On 18 June the Minister for Foreign Affairs announced a further contribution of $3 million to assist victims of the conflict in Darfur.

On 21 June the Minister for Foreign Affairs wrote to the Sudanese Foreign Minister expressing the Government’s deep concern over the situation in Darfur. He urged the Sudanese Government to take immediate steps to stop the conflict there, to end its support for the “Janjaweed” militias that have been responsible for appalling human rights abuses in Darfur, to disarm all militia groups and prosecute the perpetrators of human rights abuses. He urged the Sudanese Government to commence negotiations with the people of Darfur and, if necessary, to establish an internationally-supervised ceasefire and peace process. Furthermore, he emphasised that the Sudanese Government must provide free access to Darfur for United Nations representatives and international aid agencies to supervise the distribution of aid to the victims of the conflict.

(2) We welcome all constructive suggestions for ending the humanitarian crisis in Darfur. However, the Government is not convinced that an oil embargo on Khartoum would constitute an effective means of applying pressure to end the crisis in Darfur. Arrangements to share Sudan’s oil revenues are a key component in the peace talks to end the 21 year civil war in southern Sudan. Imposing an oil embargo might jeopardise those talks, without providing any benefit to the people of Darfur.

(3) The Australian Government, in concert with like-minded governments, has taken firm action to urge the United Nations to act swiftly and decisively on Darfur. On 14 June 2004 Australia, with New Zealand and Canada, urged the UN Security Council to take immediate action to end the war crimes and crimes against humanity being committed in Darfur.

Howard Government: Advertising

Senator ABETZ (Tasmania—Special Minister of State) (3.04 p.m.)—I have some brief supplementary information in relation to the answer I gave to Senator McLachlan today. I am able to confirm that, if any focus groups have been undertaken—as suggested by Senator McLachlan—they are not associated with any government information campaign.

ANSWERS TO QUESTIONS ON NOTICE

Question No. 2868

Senator ALLISON (Victoria) (3.04 p.m.)—Pursuant to standing order 74(5) I ask the Minister representing the Minister for Transport and Regional Services to explain why an answer has not been provided to question No. 2868, concerning advertising in relation to the Scoresby Freeway.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (3.05 p.m.)—I thank Senator Allison for her courtesy in advising my office yesterday that she would be raising this. I have made inquiries of the minister’s office to find out about the progress of the written answer to that question. It is a very important question that relates to the Australian Labor Party government in Victoria misleading people on the Scoresby Freeway project. As Senator Allison knows, the Victorian government promised before the last election—and, in fact, signed a memorandum of understanding with the Australian government—to construct a freeway along the Scoresby corridor, effectively linking Frankston in the south with the eastern spine of Melbourne. The Commonwealth committed, as Senator Allison knows, $445 million towards building it as a freeway—f-r-e-e—and not as a tollway. Shortly after the state election, the Bracks government—Mr Bracks
himself—tore up the memorandum of understanding and they are now—

Senator Allison—Mr President, I rise on a point of order. The minister is not giving an explanation as to why the answer to the question is late. He is debating the matter of whether or not the freeway should have tolls on it.

The President—I was about to remind the minister that he should be giving an explanation rather than debating the matter.

Senator IAN CAMPBELL—I am giving an explanation; it is a very important explanation. The question relates to advertising about the Scoresby Freeway, which is about to become a tollway. But I said at the beginning of my explanation that I have sought reasons from the minister as to why the answer has not arrived. I am told that the answer will be available in the very near future for the Senate, and I will ensure that it is tabled as soon as possible.

Senator ALLISON (Victoria) (3.07 p.m.)—I move:

That the Senate take note of the minister’s response.

It is not good enough. It is possible that tomorrow will be the last time before the election that the Senate will sit and the last time there will be an opportunity to ask questions of ministers. The Minister for Local Government, Territories and Roads, even with notice yesterday, cannot assure the Senate that that question will be answered, as it ought to be, almost immediately. It defies belief that the department cannot tell us how much money has been spent on advertising—mostly in Melbourne, in Victoria—in relation to the Scoresby Freeway. The minister is trying to obscure the fact that his department is unwilling and possibly unable—but it seems to me more likely that it is unwilling—to tell us how much money has been squandered on yet another advertising campaign that has nothing to do with information and nothing to do with letting people know about freeways, about expenditure or about anything else. It is an attack on the Victorian state government.

While I am not here to defend them—and I am sure they would not want me to—I am interested in how much money has been absolutely wasted by this process. We have had day after day of full-page spreads in all of the daily papers talking about the federal commitment to this ridiculous freeway and the ongoing political argy-bargy between the federal government and the Victorian state government about whether or not the agreement included tolls. We know very well that neither the ALP state government nor the federal government wish to fund this freeway, and with good reason. Money came out of the Roads of National Importance, and this is not one of those under any criteria you could care to name. It has been used as a political football. We have seen ridiculous amounts of money—and we do not know how much, because the minister will not answer the question—thrown at this campaign. I will go through the question. The minister was keen to waste time today, so I will as well. Question on notice No. 2868 asks the minister:

1. How much has the department budgeted for advertising in relation to the Scoresby Freeway in 2002-03 and in 2003-04.
2. How much of this money has been spent to date.
3. What was the cost of the press advertising in the period 23 April to 25 April 2004—at its height, I might say—
4. (a) What resources have been allocated from other departments for advertising in relation to the Scoresby Freeway in 2002-03 and in 2003-04; and
   (b) how much has been spent to date.
I will ask this question tomorrow if an answer does not arrive between now and then. I want to conclude by saying that I think it is a pretty poor performance on the minister’s behalf.

Question agreed to.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Australian Federal Police: Investigation
National Security

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.10 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Justice and Customs (Senator Ellison) and the Minister for Defence (Senator Hill) to questions without notice asked by Senators Faulkner, Wong and Ray today relating to the publication of material from classified Office of National Assessment documents.

Today is the anniversary of the publication of Mr Bolt’s article in the Herald Sun. It was first published on Monday, 23 June 2003, exactly one year ago. In that article it was revealed that Mr Bolt had access to the top secret ONA report Iraq: humanitarian dimension, written by the former ONA employee Andrew Wilkie. This is the same Andrew Wilkie who was becoming an embarrassment to the Howard government.

I want to make this point very clear. Receiving and communicating such a document is a very serious matter. Even if Senator Hill does not know that, it is a very serious matter. It is punishable by two years imprisonment under section 79 of the Crimes Act. We had an extraordinary situation in question time today, when Senator Hill said, ‘Oh, Mr Bolt’s an honourable man,’ and that he was confident he would not disclose and publish classified national security material. That is what he said in question time today. The trouble is that Mr Bolt himself says this in his article. When I go through the only secret report that Wilkie, as an Office of National Assessments analyst, ever wrote about Iraq, I wonder just who fell for a fairytale. Then later in the article Bolt quotes directly from that ONA report at length.

Mr Bolt has done just what Senator Hill claims he is confident he would never do. He has done it by his own admission. We know that this in fact endangers our intelligence-sharing arrangements with the United States of America and the United Kingdom. What happened? The ONA asked the Australian Federal Police to investigate. We had Senator Ellison making the statement on Friday, 18 June that the investigation had concluded and that the AFP had concluded that there was no direct admissible evidence to identify any of the recipients of the report as to the source of the disclosure to journalist Andrew Bolt. This is a statement that is most notable for its omissions. The AFP did not say that no evidence had been found. Minister Ellison said nothing at all about whether all those interviewed by the AFP had cooperated. He said nothing about what the government intended to do in relation to Bolt, who admitted receiving a copy of this report and publishing its highly classified contents.

Through questioning in parliament and at Senate committee hearings and some investigative journalism on this same matter, we have been able to piece together when happened to this ONA report. It was published in December 2002. It was issued to a restricted list of addressees. Copies were later returned and logged in accordance with handling procedures for highly classified material. Then, six months later on 20 June 2003, Mr Downer’s office requested a copy—the only such request in a whole six-month period. Three days later, on 23 June 2003—a year ago today—Mr Bolt published his article. That is what has happened. If the ONA document handling system is worth its salt, it should reveal which of the original copies of
the top-secret report were returned and when; and which copies, if any, remain with recipients. It should also reveal who in Mr Downer’s office requested a copy of the report and if and when it was returned. Surely we can establish who that person was in Mr Downer’s office who was responsible for this matter. (Time expired)

Senator FERGUSON (South Australia) (3.15 p.m.)—All I can say is that I bet Senator Faulkner will be glad when this week is over because it seems as though Senator Faulkner and, to a lesser extent, Senator Ray are running a two-man opposition. Nobody else on that side seems to be able to speak in taking note of answers. Nobody else seems to be involved in any of the issues that they consider serious. We have just had two weeks of estimates hearings with Senator Faulkner and Senator Ray constantly asking all of the questions. In the case of the hearings into Defence, voting members of that committee scarcely had the opportunity to ask even one question about issues of expenditure. Today, again, we have Senator Faulkner coming in and leading the fray—asking the leading questions and taking note of answers.

Senator Faulkner—I get paid for it.

Senator FERGUSON—You do get paid for it, that is right, Senator Faulkner. But I would have thought that, amongst the 28 or 29 senators on that side, somebody else—other than the Leader of the Opposition in the Senate and Senator Ray—could run the lines that they really want to run. Senator Faulkner simply will not accept the answers given by the minister. The AFP have concluded their investigation into the two referrals from the ONA concerning the alleged unlawful disclosure of a top-secret report.

Senator Robert Ray—It is only alleged, is it?

Senator FERGUSON—Yes, it is an alleged unlawful disclosure. The first investigation related to the article written by Andrew Bolt.

The DEPUTY PRESIDENT—Could we have some quiet whilst Senator Ferguson makes his contribution. Others have had their chance. Those who have not had a chance will have a chance to make their contribution.

Senator Mackay—The same courtesy was not shown to me—there was 15 minutes of slagging.

Senator FERGUSON—You are not accusing me of that slagging I hope, Senator Mackay.

The DEPUTY PRESIDENT—Senator Ferguson, address your remarks through the chair. Do not get involved in the cross-fire.

Senator FERGUSON—I always try to address my remarks through you or to you, Mr Deputy President. The first investigation related to those allegations against Andrew Bolt—a journalist who is not particularly liked by those opposite.

Opposition senators interjecting—

Senator FERGUSON—I have heard Senator Ray make comments before. Anybody who happens to put forward a point of view that the Labor Party do not agree with becomes an unreliable and biased journalist in their eyes. Of course those of us on this side think there are some others who do not present a very balanced point of view. The Minister for Justice and Customs stated today, as he has previously stated, that there was no direct admissible evidence—that is to say, there is simply insufficient evidence to identify any of the recipients of the report as the source of the disclosure. That is the result of the AFP investigation. As Senator Ellison also stated here again today—he seems to have to report ad nauseam in answer to ques-
tions on this—the AFP have finalised their investigation into the matter. That has been adequately explained to the Senate.

Senator Robert Ray interjecting—

Senator FERGUSON—Senator Ray, you will have a chance to make your contribution in a minute. I am quite sure that, when you do make your contribution, you will come up with all of those instances where you think that investigation has been inadequate. There was a second investigation of course concerning questions directed to Mr Wilkie at a parliamentary committee. The AFP have also finalised their report in relation to that matter. Once again they have concluded that there was insufficient evidence of any offence having been committed.

Senator Faulkner—How do you know that?

Senator Robert Ray interjecting—

The DEPUTY PRESIDENT—Senator Faulkner and Senator Ray, allow Senator Ferguson to complete his contribution.

Senator FERGUSON—When Senator Faulkner and Senator Ray get so upset, we know we are hitting a raw nerve—because they are trying to seek information from the minister which in fact he has adequately responded to. It does not matter how often they raise this issue in this place, the investigations into those allegations have been completed. The AFP have concluded that there is simply insufficient evidence for any further action to be taken. No answer will ever satisfy Senator Ray. No answer will ever satisfy Senator Faulkner. So I guess they will continue to make their accusations in this chamber.

Senator ROBERT RAY (Victoria) (3.21 p.m.)—The leaking of the top secret AUSTEO code-worded ONA document will always be an extremely serious matter. Such seriousness is compounded by the fact that it was leaked to a sympathetic journalist in order to discredit and denigrate a government critic whose accusations were perceived to be a threat to the government. What stands out in this is the absolute passivity of the government on this issue. They are happy on most occasions to boast about their patriotism, but suddenly they are struck dumb. I cannot recall one minister, let alone the Prime Minister, roundly condemning this treacherous leak. Can anyone point to a criticism of the journalist by government ministers? We know that Mr Bolt is a slavish acolyte of the Liberal Party, constantly peddling poisonous right-wing agendas. This issue goes beyond partisan loyalty. It goes beyond issues of press freedom. A government that leaks to a journalist in complete defiance of the Crimes Act and all previously professed oaths of office is a low-rent government indeed.

This government has constantly stonewalled on this issue, pleading that it was an operational matter and implying what a relief it was not to have to face up to the issue as long as they could use the AFP as an excuse. Look at the palpable relief expressed by the government spokesman to the police finding that there was insufficient evidence to nominate the leaker. Normally a leak of this magnitude would see minister after minister condemning it. Just think of the resources spent on pursuing Trent Smith for what are, by comparison, minuscule issues. Why haven’t other ministers done this? They have drawn the same conclusions we have; they know that the leak was from a ministerial office. This government has been toying with the idea, through ASIO, of introducing polygraphs. I bet the staff of Mr Downer’s office are glad that this is yet to be implemented.

We in the opposition say that this leak emanated from the foreign minister’s office, almost certainly and initially without his knowledge. But he now has a duty to front
up to his staff—including those employed then who may have left subsequently—and ask them the hard questions, something we know he has not done. What we want to know is whether all of Mr Downer’s staff fully cooperated and volunteered all the information to the Federal Police. There has been no answer to that today, either here or in the other place. We want to know whether Mr Downer’s office telephone numbers and records were made available to the Federal Police, and we want to know precisely who in Mr Downer’s office made the 20 June request to ONA for a reissued copy of the ONA top secret report. Given that the report was coded in the manner it was, we must conclude that it contained material from overseas intelligence agencies. Have those agencies been informed that some of their material may have been disclosed by the treacherous leaking of this report? How often have we been told that we cannot have a particular document because it contains overseas material? Well, you can if you are a sycophantic mate of this government.

The opposition have reached its own conclusions about who leaked this. Based on information given to us, we could make a very close guess. But, no, I will not name my guess in this chamber, because you must extend the benefit of doubt. You cannot abuse privilege by throwing names around; I accept that. But I think it is up to Mr Downer to ask his present and past staff who it was who leaked this matter. I have a high regard for Mr Downer, but I have to say this: on Monday this chamber censured Senator Hill for his shortcomings, but this leak and its knock-on consequences are 10 times more serious than any accusation made against Senator Hill. If it transpires that Mr Downer’s office did indeed, as we believe, leak this particular top secret report, he should hand in his resignation. Imagine if a Labor minister had authorised or allowed a staff member to disclose a top secret report—we would have never heard the end of it in government. (Time expired)

**Senator Johnston (Western Australia)**

(3.26 p.m.)—I can stand here and say that neither Mr Downer nor anybody in his office leaked this report such that the law was breached. I can stand here and say that categorically, I can say that because the Australian Federal Police conducted an investigation and found insufficient evidence to found any case that the law was breached. I am very surprised that two senior members of the opposition would come in here and make such direct allegations against the minister and the people in his office in the face of what the AFP have said after two investigations.

The AFP have said that there is insufficient evidence—in other words, there is no evidence beyond a reasonable doubt such that would found a conviction. That is the inference. If you do not accept that, you want to shoot the messenger. You cannot swallow the fact. The AFP have got to be wrong—that is what you are saying. You are saying that, when the ONA refers a matter to the AFP, the AFP do not do their job. What the opposition really wants is a prosecution that is based on flimsy, insufficient, half-baked, trumped-up evidence. That is what you would love to see. That is the standard of justice you are desperately seeking. You are desperate to try to pin this on somebody in the face of a proper AFP inquiry and investigation, and you cannot stomach that. The opposition cannot swallow the fact.

**Senator Robert Ray interjecting**—

**Senator Johnston**—Senator Ray, above all people, knows the requirement in our judicial process for proper evidence to found a conviction that carries two years imprisonment. What he is saying to this place today is: ‘I don’t care what the evi-
ience is like. I’m not interested in whether there is a presumption of innocence or whether the evidence is beyond a reasonable doubt. I don’t care about that. What I want to see is a kangaroo court, a show trial. Let’s nail ’em up. It’s close enough to Easter, so let’s nail ’em up. That’s what we want to do.’ But no. Two AFP inquiries were initiated by the ONA—not by the government. The government did not do it; the ONA did it. An independent agency of the government said, ‘Let’s have an inquiry into this matter. It is serious.’ That is the only thing you have been right about. The AFP reviewed the evidence and decided to investigate. So they have gone that next step—they have had the investigation.

There is a threshold question, for the benefit of Senator Ray: is the matter serious and should we investigate it? The AFP have said yes on two counts: ‘It is serious. We will investigate.’ After the AFP have done a proper, thorough and complete investigation, lo and behold, much to the disdain, disappointment and depression of the desperate people in the opposition, the AFP find there is insufficient evidence to convict, to lay a charge, to accuse. Notwithstanding that, Senator Ray and Senator Faulkner come in here and say: ‘The foreign minister did it. And if he didn’t do it, someone in his office did.’ What a half-baked insult to justice that really is.

Senator WONG (South Australia) (3.31 p.m.)—Listening to Senator Johnston, to Senator Ferguson and to the answers given today both by Senator Hill and by Senator Ellison, you would think that the government were in fact acting as defence lawyers. That is what you sound like—a bunch of defence lawyers raising the issue of admissibility of evidence and the presumption of innocence. You are not sounding like a government investigating a serious breach of national security—the leak of a highly classified document to a journalist.

Let us focus on what we do know about what has occurred. We know that a report containing highly classified intelligence, a top secret report, was prepared by ONA analyst Andrew Wilkie. We know that that report was released to identified recipients in December 2002 and we also know that no further copies were requested of the ONA except one. We know that on 20 June last year there was a single request for a copy of that document from the office of the foreign minister, a request that, on the public record, Mr Wilkie has stated is recorded in the ONA log. Three days after that request we have the Andrew Bolt article—the ‘honourable’ man, according to Minister Hill—in which he demonstrates in his own words the disclosure of top secret information. He indicates that he is quoting and reading from this top secret document—a self-confessed disclosure of highly classified material.

As a result of that controversy we have had two Australian Federal Police investigations which, according to the minister, are now concluded. It is important to note that the minister, in this chamber on a number of occasions, has failed to answer important questions about the conduct of this investigation. He has been evasive, he has been inconsistent in his answers to this chamber and he has been inconsistent in the answers given in this chamber and the comments he has given to the press. First, the minister was directly asked whether the foreign minister’s office cooperated with the AFP inquiry, including whether any current or former staff declined to be interviewed, and he was specifically asked whether Minister Downer’s office consented to their phone records being provided to the AFP. This is in the context of Minister Downer having committed to the House that he would fully cooperate with the investigation.
Neither the minister nor any of the senators on the other side who have spoken in support of the minister’s position answered any of those questions. They never answered the question of whether phone records were provided or whether any staff declined to be interviewed. As I said, this is against a backdrop of a commitment given by the foreign minister. If this commitment was honoured, if the foreign minister’s office did fully cooperate, why didn’t Minister Ellison simply say so? Why didn’t he simply answer the question? He could have said yes, and his failure to do so is pretty instructive.

I want to turn to the inconsistency of the answers given by Minister Ellison, both in this chamber and as compared to his statements to the press. Yesterday he was asked a question by Senator Ray about the investigations. In that answer he said that there was ‘absolutely no evidence’ connecting the foreign affairs minister and his office with that issue. However, the Sydney Morning Herald article quotes the minister as saying that the AFP has concluded there is ‘no direct admissible evidence’ to identify any of the recipients of the document as the source of the leak. Today in question time he gave another two answers—that there was ‘insufficient evidence’ and also ‘no evidence’.

I think most people know there is a fair degree of difference in law between ‘absolutely no evidence’, which means precisely that, and ‘insufficient evidence’, which is generally used to indicate that there is some evidence which would tend to prove the fact, but it is insufficient to mount a prosecution. There is an even greater distinction between ‘no evidence’ and ‘no direct admissible evidence’. What that means is that there is evidence, but it is not direct or it is not admissible—that is, it might be hearsay evidence. It is not appropriate for the government to hide behind the sorts of formulations that defence lawyers are required to use in relation to their clients when it is dealing with a matter of national security, when it is dealing with investigations into the leaking of top secret classified information. It is not appropriate for the government to come in here and say, ‘There was no direct admissible evidence.’ (Time expired)

Question agreed to.

Howard Government: Advertising

Senator MURRAY (3.37 p.m.)—I move:

That the Senate take note of the answer given by the Special Minister of State (Senator Abetz) to a question without notice asked by Senator Murray today relating to government advertising campaigns.

The Democrats and many other members and senators have long campaigned for more controls on government advertising. We, along with many other senators and members, actively support information and advertising designed to inform Australians of government services. But government advertising with the real intent of being party political does need to be reined in. We have long believed that all governments—state, territory and federal—have been guilty of this practice to some degree, but under this government since 1996 the scale and cost has escalated, and great controversy is the consequence. The Democrats do believe that the unfettered right of governments to spend taxpayers’ money on their advertising campaigns should be curtailed and constrained, and we do not think that the present way in which the 1995 guidelines are used is appropriate.

The Democrats and Labor put together a Senate order to require compliance with the Auditor-General’s guidelines. These have been defied by the coalition. That Senate order stated that the details of each advertising or public information project must be tabled in the Senate, covering the purpose and nature of the project, the cost, who
authorised the project, whether it is to be carried out under contract and, if that contract was let by tender, who the information is targeted at and whether it meets established guidelines. The details should be revealed within five sitting days of the Senate after the project is approved.

I draw the chamber’s attention to appendix 1 of the Auditor-General’s report No. 12, which contains the following guidelines for government advertising. The underlying principles governing the use of public funds for government information programs allow the public to have equal rights to access of information in relation to government policy or programs which affect their rights or entitlements. It also allows governments to legitimately use public funds for information programs or education campaigns to explain government policies and programs and to inform the public of their obligations, rights and entitlements.

The guidelines are outlined as follows. Firstly, material should be relevant to government responsibilities. In developing material to be communicated to the public, it is suggested that the subject matter should be directly related to the government’s responsibilities, that an information strategy should be considered as a routine and integral part of policy development and program planning, and that no campaign should be contemplated without an identified information need by identified recipients based on appropriate market research. Secondly, material should be presented in an objective and fair manner. The guidelines are suggested to assist in determining whether the material communicated is presented in an explanatory, fair and objective manner, and those are outlined in the guidelines. Thirdly, material should not be liable to misrepresentation as party political. The guidelines under this heading recommend that information campaigns should not intentionally promote, or be perceived to be promoting, party political interests. Material should be presented in unbiased and objective language and in a manner free from partisan promotion of government policy and political argument. Material should not directly attack or scorn the views, policies or actions of others, such as the policies and opinions of opposition parties or groups, and information should avoid party political slogans or images.

The opposition in estimates have established that leading up to this election there will be approximately $123 million of expenditure on government advertising. This is a taxpayer funded party political campaign in large part, and it is unacceptable in our democracy. We have noted that the process by which the 1995 guidelines are utilised is extremely defective. The question asked of the expert adviser to the committee approving government advertising was:

Is there a minister or a person representing the minister who signs off the project and signs that it is in accord with these guidelines?

Mr Williams answered:

There is no formal process there, no.

That is just not acceptable. We think that the process that the government is undergoing now is contrary to Australian political ethics.

Question agreed to.

PETITIONS

The Clerk—Petitions have been lodged for presentation as follows:

Education: Funding

Your petitioners therefore request the Senate to: Ensure that the funding policies of the Commonwealth Government are reformed to provide increased and fairer funding for public schools.

by Senator Bolkus (from 149 citizens), Senator Buckland (from 68 citizens) and
Senator Kirk (from 159 citizens).

**Education: Funding**

To the Honourable the President and Members of the Senate in Parliament assembled:

The petition of certain citizens of Australia undersigned draws the attention of the Senate:

A well funded Public Education system is vital to the maintenance of a fair and democratic Australian society.

Legislation that will allocate the share of federal funding going to government and non-government schools will soon be debated in Parliament. Currently, about 70% of this funding goes to 30% of total student population (non-government schools), while the remaining 30% of funding goes to 70% of total student population (government schools).

The States Grants Act needs to be amended to make the share for government school students fairer. We need our public schools to be well resourced.

Your petitioners therefore ask the Senate to:

1. Ensure that the funding policies of the Commonwealth Government are reformed to provide increased and fairer funding for public schools.

by Senator Kirk (from 10 citizens).

Education: Funding

To the Honourable the President and Members of the Senate in Parliament assembled:

The petition of the citizens of Australia undersigned shows:

A well funded Public Education system is vital to the maintenance of a fair and democratic Australian society.

We need our public schools to be well resourced.

This requires the Federal Government to provide a fairer model for funding Australian schools.

Your petitioners therefore request the Senate to:

Ensure that the funding policies of the Commonwealth Government are reformed to provide increased and fairer funding for public schools.

by Senator Kirk (from 488 citizens).

**Indigenous Affairs: Government Policy**

To the Honourable the President and members of the Senate in parliament assembled:

The petition of the undersigned shows:

That the current intention of the Government to abolish the rights of Aboriginal and Torres Strait Islander people to exercise their right of self-determination and self-management, will severely disadvantage Aboriginal and Torres Strait Islander people.

Your petitioners request that the Senate:

1. oppose any legislation for the abolition of ATSIC unless and until an alternative elected representative structure, developed and approved by Aboriginal and Torres Strait Islander peoples is put in place and which would, at the same time assume the function of ATSIC.

2. oppose any move to appoint an advisory committee as contrary to the rights of Aboriginal and Torres Strait Islander people to elect their own representatives.

3. oppose any move to diminish, dismantle, destroy and/or erode the principles of self-determination and self-management since any such action would turn back the clock on hard won rights of Aboriginal and Torres Strait Islander people.

4. strongly defend these rights of self-determination and self-management of Aboriginal and Torres Strait Islander people previously supported by the Australian Parliament.

5. oppose any move to mainstream services for Aboriginal and Torres Strait Islander people as this too would severely disadvantage Aboriginal and Torres Strait Islander people.

by Senator Faulkner (from 24 citizens).

Petitions received.

NOTICES

Presentation

Senator Ian Campbell to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the Criminal Code Act 1995,

**Senator Stott Despoja** to move on the next day of sitting:

That the Senate, recalling its resolution of 14 October 2003 relating to human rights in Colombia:

(a) notes again with regret the long and continuing history of violence directed towards human rights defenders in Colombia;

(b) reiterates its recognition of the important role performed by both local and international human rights organisations in Colombia and the positive contribution made by international observers including the United Nations Human Rights Commission, the Inter-American Commission on Human Rights, Peace Brigades International, Amnesty International and Human Rights Watch;

(c) expresses its concern that:

(i) rural communities, and in particular the Peace Community of San José de Apartadó, as well as local human rights defenders, and international observers that accompany this community, such as Peace Brigades International and the International Fellowship of Reconciliation, have recently been subjected to increased intimidation in the Urabá region of North-West Colombia, and

(ii) the safety of members of the above-mentioned community, their leaders, and the international human rights organisations present in the area, is at risk following recent adverse statements made by members of the Colombian Government, who have in the past equated human rights organisations with agents of terrorism;

(d) notes:

(i) that the Peace Community of San José de Apartadó has been granted provisional precautionary measures by the Inter-American Court of Human Rights, because of the high level of risk suffered by community members, which has claimed the lives of many within the community in recent years, and

(ii) that these provisional measures were also re-affirmed by the Constitutional Court of Colombia, which ordered that the safety of the community and the fundamental human rights of its people be guaranteed; and

(e) expresses its hope that the Colombian Government will guarantee the safety of the people of San José de Apartadó, and of the international observers who accompany them.

**Senator Allison** to move on the next day of sitting:


**Senator Stott Despoja** to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) the University of New South Wales (UNSW) and Monash University bookshops were joint winners of the 2003 Australian Tertiary Bookshop of the Year award,

(ii) being a winner, the UNSW bookshop also recognises that students will be losers when the Educational Textbook Subsidy Scheme ceases on 30 June 2004 and has been trying to meet the demand of students who wish to purchase textbooks before prices rise,

(iii) the UNSW bookshop is concerned about the effect of the closure of the scheme on students’ access to educational resources at a time of increasing higher education contribution scheme fees and is saddened
by the discontinuation of a successful scheme, and
(iv) booksellers will soon face the additional cost of updating or modifying their software, as they did 4 years ago, to accommodate the closure of the scheme;
(b) condemns the Government for effectively introducing a new tax from 1 July 2004, which will result in students paying price increases of up to 10 per cent; and
(c) urges the Government to extend the scheme.

Senator Nettle to move on the next day of sitting:
That the Senate—
(a) notes:
(i) the Senate resolution of 8 October 2003 that called on the Australian Government to support the development of a Protocol to the ‘Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects’ to prevent the creation of explosive remnants of war and reduce their impact on humanity,
(ii) that on Friday, 28 November 2003, the 92 nations that are signatories to this Convention adopted Protocol V to the Convention to deal with cleaning up explosive remnants of war after a conflict ends, and
(iii) that thousands of civilians continue to be killed and maimed by explosive remnants of war each year; and
(b) calls on the Australian Government to sign and ratify Protocol V of the Convention without delay.

Senator Nettle to move on the next day of sitting:
That there be laid on the table, by 3 pm on 30 June 2004, the following documents:
(a) all correspondence between Environment Australia and Hutchison 3G in relation to the installation of videophone facilities in Oatley Park; and
(b) all correspondence between Environment Australia and Telstra in relation to the installation of videophone facilities in Leichhardt and Coogee.

Senator Nettle to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) it is estimated that at least 300 000 children under the age of 18 are currently taking part in armed conflicts around the world,
(ii) more than 2 million children have been killed in armed conflicts in the past decade, with a further 6 million seriously injured or permanently disabled,
(iii) an Optional Protocol to the Convention on the Rights of the Child has been developed that ‘prohibits governments that have signed up and armed groups from using children under the age of 18 in conflict’, and
(iv) Australia signed the Optional Protocol on the Involvement of Children in Armed Conflict on 21 October 2002, but has so far failed to ratify the Optional Protocol; and
(b) calls on the Australian Government to ratify the Optional Protocol without further delay.

Senator Ridgeway to move on the next day of sitting:
That the Senate—
(a) acknowledges that midwives have a critical role to play in birthing services, especially given the shortage of obstetricians and an increase in invasive caesarean section procedures;
(b) notes that:
(i) there is a chronic shortage of obstetricians, especially in rural, remote and outer suburban areas,
(ii) 60 per cent of births involve no complications and can be safely performed by midwives,
(iii) a 2002 report estimated a national shortage of more than 1,800 midwives,
(iv) 386 registered midwives are not currently practicing, primarily due to a lack of medical indemnity insurance,
(v) caesarean sections have been identified by the World Health Organization as occurring at twice the desirable level,
(vi) increasingly, women are embracing non-medical and non-invasive births;
(c) calls on the Federal Government to:
(i) recognise that the Victorian Government’s decision to fund midwifery birthing units as positive,
(ii) include midwives in the 2002 Medical Indemnity package to increase the number of registered and practicing midwives, and
(iii) increase funding for training services for midwives, to address the current shortage.

Senator Nettle to move on the next day of sitting:
That the following matters be referred to the Community Affairs Legislation Committee for inquiry and report by 29 November 2004:
(a) the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill 2002 [No. 2];
(b) the social and economic implications of increasing the co-payment for Pharmaceutical Benefits Scheme listed medicines, including the long-term implications for the health of Australians; and
(c) any related matters.

Senator Brown to move on the next day of sitting:
That the Senate—
(a) notes that the Australian flag flying above Parliament House has twice been obscured by fog during in the week beginning 20 June 2004;
(b) notes that school children have been in the vicinity; and
(c) calls on the Government not to defund Parliament but rather, recognising that fog results from hot air rising into a colder atmosphere, to see what can be done to prevent this emblematic obfuscation recurring.

Withdrawal
Senator RIDGEWAY (New South Wales) (3.43 p.m.)—Mr Deputy President, I withdraw general business notice of motion No. 918.

SPORT: DRUG TESTING
Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.43 p.m.)—by leave—I have a small matter arising out of the statement to the Senate by Senator Kemp, Minister for the Arts and Sport, who had agreed to the tabling of the partial arbitral award pronounced by the Court of Arbitration for Sport, Oceania Registry. I now seek leave to table that document.
Leave granted.

NOTICES
Presentation
Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.44 p.m.)—I give notice that, on the next day of sitting, I shall move:
That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:
Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004
Family and Community Services and Veterans’ Affairs Legislation Amendment (Sugar Reform) Bill 2004
Higher Education Legislation Amendment Bill (No. 2) 2004.

I also table statements of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statements incorporated in Hānsard.

Leave granted.

The statements read as follows—

AUSTRALIAN ENERGY MARKET BILL 2004

TRADE PRACTICES AMENDMENT (AUSTRALIAN ENERGY MARKET) BILL 2004

Purpose of the Bills
These bills form an integral part of an agreed national legislative framework for the Australian energy market. The package of legislative reforms agreed with the states and territories provide for the establishment of a single national regulator (the Australian Energy Regulator) for the energy market and another body (the Australian Energy Market Commission) for the evaluation of proposed changes to the rules governing the operation of the gas and electricity codes.

Reasons for Urgency
The Commonwealth and the states and territories have agreed to establish the Australian Energy Regulator and the Australian Energy Market Commission by 1 July 2004. Introduction and passage of the bills in the 2004 Winter sittings is designed to meet that timeline.

(Circulated by authority of the Minister for Industry, Tourism and Resources and the Treasurer)

CUSTOMS LEGISLATION AMENDMENT (AIRPORT, PORT AND CARGO SECURITY) BILL

Purpose of the Bill
These bills form an integral part of an agreed national legislative framework for the Australian energy market. The package of legislative reforms agreed with the states and territories provide for the establishment of a single national regulator (the Australian Energy Regulator) for the energy market and another body (the Australian Energy Market Commission) for the evaluation of proposed changes to the rules governing the operation of the gas and electricity codes.

Reasons for Urgency
The Commonwealth and the states and territories have agreed to establish the Australian Energy Regulator and the Australian Energy Market Commission by 1 July 2004. Introduction and passage of the bills in the 2004 Winter sittings is designed to meet that timeline.

(Circulated by authority of the Minister for Industry, Tourism and Resources and the Treasurer)

FAMILY AND COMMUNITY SERVICES AND VETERANS’ AFFAIRS LEGISLATION AMENDMENT (SUGAR REFORM) BILL

Purpose of the Bill
The bill provides a three year ‘window of opportunity’, during which pension age sugarcane farmers may transfer their farm and farm assets, valued at up to $500,000, to the next generation without penalty under the social security and veterans’ entitlements disposal (gifting) rules.

Reasons for Urgency
The sugar reform measure is to commence on Royal Assent but is a high legislative priority as part of the Sugar Industry Reform Program 2004 announced on 29 April 2004. To achieve this commencement, passage is needed by the end of the 2004 Winter Sittings.

(Circulated by authority of the Minister for Family and Community Services)
Higher Education Legislation Amendment Bill (No. 2)

Purpose of the Bill

The bill amends the Higher Education Funding Act 1988 and the Higher Education Support Act 2003 (HESA) to update funding amounts to reflect indexation increases, budget decisions and other adjustments for the 2004-2008 funding years. The bill also amends HESA, related taxation legislation, the Higher Education Support ( Transitional Provisions and Consequential Amendments) Act 2003 and the Australian National University Act 1991 to ensure the smooth implementation of the higher education reforms.

Reasons for Urgency

The amendments need to be in place by 1 July 2004 to allow certain payments to be finalised before the end of the 2003-04 financial year.

(Circulated by authority of the Minister for Education, Science and Training)

Senator Brown to move on the next day of sitting:

That the Australian Energy Market Bill 2004 and the Trade Practices Amendment (Australian Energy Market) Bill 2004 be referred to the Legal and Constitutional Legislation Committee for inquiry and report by 31 August 2004, with particular reference to the constitutional implications and legal precedents that will be established by giving the South Australian Parliament the ability to modify Commonwealth law, regulations and rules.

Senator Brown to move on the next day of sitting:

That the Senate—

(a) notes that the Council of Australian Governments (COAG) agreed in August 2003 to develop a national water initiative which would:

(i) ‘ensure ecosystem health by implementing regimes to protect environmental assets at a whole-of-basin, aquifer or catchment scale’, and

(b) include ‘firm pathways and open processes’ for returning over-allocated surface and groundwater systems to environmentally-sustainable levels of extraction; and

(b) calls on COAG to reject any agreement on the national water initiative which fails to ensure ecosystem health or to provide firm pathways, including clear timelines, and open processes for reducing extraction from over-allocated surface and groundwater systems to environmentally-sustainable levels.

Committees

Selection of Bills Committee Report

Senator FERRIS (South Australia) (3.47 p.m.)—I present the ninth report of 2004 of the Selection of Bills Committee and I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

Selection of Bills Committee Report No. 9 of 2004

1. The committee met on Tuesday, 22 June 2004.

2. The committee resolved to recommend—

That—

(a) the provisions of the Anti-terrorism Bill (No. 2) 2004 be referred immediately to the Legal and Constitutional Legislation Committee for inquiry and report by 5 August 2004 (see appendix 1 for statement of reasons for referral);

(b) the provisions of the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004 be referred immediately to the Economics Legislation Committee for inquiry and report by 12 August 2004 (see appendix 2 for statement of reasons for referral); and

(c) the following bills not be referred to committees:
The committee recommends accordingly.

3. The committee considered a proposal to refer the Marriage Legislation Amendment Bill 2004 to the Legal and Constitutional Legislation Committee, but was unable to reach agreement on whether the bill should be referred (see appendix 3 for statement of reasons for referral).

4. At the request of Senator Mackay, the committee considered a proposal to refer the Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003 to the Employment, Workplace Relations and Education Legislation Committee for further consideration, but was unable to reach agreement on whether the bill should be referred (see appendix 5 for statement of reasons for referral).

5. The committee deferred consideration of the following bills to the next meeting:
   Bill deferred from meeting of 10 February 2004
   • Racial and Religious Hatred Bill 2003 [No. 2].
   Bill deferred from meeting of 23 March 2004
   • Resale Royalty Bill 2004.
   Bill deferred from meeting of 30 March 2004
   • Flags Amendment (Eureka Flag) Bill 2004.
   Bill deferred from meeting of 15 June 2004
   • Aboriginal and Torres Strait Islander Commission Amendment Bill 2004.
   Bill deferred from meeting of 22 June 2004
   • Renewable Energy Amendment (Increased MRET) Bill 2004.

   (Jeannie Ferris)
   Chair
   23 June 2004
   Appendix 1
   Proposal to refer a bill to a committee
   Name of bill(s):
   Anti-terrorism Bill (No. 2) 2004
   Reasons for referral/principal issues for consideration
   The balance struck between security and rights in the legislation.
   Possible submissions or evidence from:
   Legal profession
   Civil liberties groups
   Academics
   Law enforcement and intelligence agencies
   Committee to which bill is referred:
   Legal and Constitutional Legislation Committee
   Possible hearing date:
   Possible reporting date(s): 5 August 2004
   Senator Sue Mackay
   Whip/Selection of Bills Committee Member

   Appendix 2
   Proposal to refer a bill to a committee
   Name of bill(s):
   Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Bill 2004
   Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004
   Reasons for referral/principal issues for consideration
   To enquire whether:
   (a) the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Bill 2004 (SIP) Bill assists small and medium sized enterprises (SMEs) to access government assistance;
   (b) it improves market access overseas;
(c) the phase down of SIP funding from 2009 threatens the future of the industry and employment;
(d) it provides adequate support for high value exports;
(e) it provides adequate support for R&D activity;
(f) it provides adequate support for production value added activity;
(g) the reduction in grant types from 5 to 2 will decrease access for some TCF firms;
(h) the cut in tariffs will have an adverse affect on the industry, economy generally, employment and sustainability of regional cities and towns;
(i) our trading partners are reducing tariffs at the same rate as Australia; and
(j) the combination of these two bills and provisions in the United States Free Trade Agreement will adversely impact on the future of the industry and on employment.

Possible submissions or evidence from:
TCF Union of Australia
Industry associations

Committee to which bill is referred:
Economics Legislation Committee

Possible hearing date:
Possible reporting date(s): 12 August 2004
Senator Sue Mackay
Whip/Selection of Bills Committee Member

Proposal to refer a bill to a committee

Name of bill(s):
Marriage Legislation Amendment Bill 2004

Reasons for referral/principal issues for consideration
To investigate:
(1) the legal interpretation of the marriage power in the Constitution, and the extent of this power with regard to the creation of marriage law and the recognition of foreign marriages;
(2) whether the Bill raises international comity issues, or inconsistency with laws, policies and standards of domestic and overseas jurisdictions;
(3) whether the Bill breaches international instruments including the Hague Convention and human rights mechanisms prohibiting discrimination on the grounds of sexual orientation;
(4) whether the Treaties relied upon in Schedule [2] of the Bill provide the Commonwealth with the necessary power to at, and how this action interferes with state and territory responsibilities to legislate for and to run adoption processes;
(5) the consequences of the Bill becoming law, and those remaining avenues available to the Commonwealth for legally recognising interpersonal relationships including same-sex relationships;
(6) the government’s insistence that this Bill be introduced as a matter of urgency when there has been no demonstrated reason for its urgent introduction and no community consultation on the provisions of the Bill.

Possible submissions or evidence from:
The Law Council of Australia
Constitutional academics
The Equal Rights Network
State and Territory gay and lesbian rights groups
Relationships’ Australia
Amnesty International
Parenting organisations

Committee to which bill is referred:
Legal and Constitutional Legislation Committee

Possible hearing date:
Possible reporting date(s): 7 October 2004
Senator Lyn Allison
Whip/Selection of Bills Committee Member

CHAMBER
Appendix 4
Sue Mackay
Labor Senator for Tasmania
Opposition Senate Whip
22 June 2004
Senator Jeannie Ferris Government Whip

SELECTION OF BILLS AGENDA
I write to seek your cooperation to add the Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003 to the agenda of the Selection of Bills Committee meeting on Tuesday 22 June 2004.
I am available to discuss this matter with you if required.
Yours sincerely
Senator Sue Mackay

Appendix 5
Proposal to refer a bill to a committee
Name of bill(s):
Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003

Reasons for referral/principal issues for consideration
Unintended consequences of the bill
Administrative complexity of requirements of the bill
Civil liberties concerns about provision of the bill
Particularly the recently tabled Democrat and government amendments

Possible submissions or evidence from:
Committee to which bill is referred:
Employment, Workplace Relations, and Education Legislation Committee

Possible hearing date:
Possible reporting date(s): September 2004
Senator Sue Mackay
Whip/Selection of Bills Committee Member

Senator FERRIS—I move:
That the report be adopted.

Senator GEORGE CAMPBELL (New South Wales) (3.47 p.m.)—by leave—I move:
At the end of the motion, add “and, in respect of the Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003, the bill be referred to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 30 September 2004”.

I move that on the basis that I understand it has been a longstanding convention in this place that, if parties wish to have matters examined by the legislation committees, that is normally granted without any debate or rancour. I fail to see why on this occasion and in the circumstances of this bill the Selection of Bills Committee has denied that reference to the legislation committee. I understand that the bill has been there before, but it is also clear to everyone in this chamber that what is currently being put before the chamber in respect of this bill is a significantly different set of circumstances and provisions to what applied to the original bill that was dealt with by the committee.

This bill raises a series of fundamental issues that warrant a look by the legislation committee. It contains, for example, the potential for the civil liberties of 700,000 building and construction workers to be trampled on. I note with interest that the committee referred a bill to the Senate Legal and Constitutional Legislation Committee, which was looking at the balance struck between security and rights in the legislation. That was the bill dealing with antiterrorism. Yet here is a set of circumstances where people’s rights may potentially be trampled on and we are being denied the opportunity to scrutinise in detail the provisions of the bill. In our view, there is a real potential for what is intended here to go way beyond what we think is the intent of the people who are moving the amendments. One of the issues of concern, for example, is that if you do not comply
there is no discretion in the court. There is an automatic penalty of six months imprisonment.

We believe that the bill in its current form would lead to mass intimidation of workers in the building and construction industry and probably in industries way beyond the building and construction industry. If we read the bill in its current context, our view is that it will apply beyond the building and construction industry and that there is a capacity for those workers to be intimidated by the applications of this bill. For example, it is providing, not to a statutory authority but to a person directly under the responsibility of a minister of the government, the use of coercive powers against individuals. That is something we have not done in respect of the antiterrorism bill. We have not put those provisions in the antiterrorism bill. I would have thought that we would have been more concerned about terrorists than about plumbers, tile layers or carpenters on building sites, quite frankly. I think it is outrageous to seek to apply these types of provisions to a bill which is essentially trying to deal with industrial relations issues.

Some aspects of the bill, in our view, have retrospective application. I always understood that the Democrats were opposed to the retrospective application of legislation, but it appears that, in this instance, they are quite happy to apply a provision that will have retrospective application in respect of individuals. Maybe there is good justification for it, but we have not heard any of those arguments. We have not had the opportunity to test it. We have not had the opportunity to get legal advice in terms of aspects of this bill and the extent to which it will be able to be applied beyond what the intent of the authors of the bill may well be.

These and other proposals warrant detailed examination by the committee, particularly in respect of the civil liberty applications. There is a real concern here that there is a capacity within this bill for individual workers’ civil liberties to be attacked in a way that is not available under the criminal law, under the Criminal Code or under the antiterrorism bill, for example. Why would we want to do it in respect of some workers in particular industries? I think it is an outrage that we are denied the capacity to examine the details of that legislation through the committee. (Time expired)

**Senator IAN CAMPBELL** (Western Australia—Minister for Local Government, Territories and Roads) (3.53 p.m.)—I want to get a couple of facts on the record. Firstly, Senator George Campbell was right when he said that this legislation has been referred to the relevant committee—I think it was the Senate Legal and Constitutional Legislation Committee. According to my records, which I think are the records of the Senate, this particular piece of legislation has been before a committee already for over 10 weeks—in fact, 72 days. It is true that there are some amendments to this bill. But Senator George Campbell continued to say that there are all these issues, retrospectivity and other issues, in this bill that have not had a chance to be considered by a committee—that is untrue. A committee has already considered this bill for very long period of time.

**Senator George Campbell interjecting**—

**The DEPUTY PRESIDENT**—Senator George Campbell, you have had your say. Senator Ian Campbell is entitled to have his say.

**Senator IAN CAMPBELL**—Secondly, if you accepted the senator’s argument that, whenever you get a new amendment to a bill that is on the Notice Paper, you need to go and refer the bill off again, in this case for another 10 weeks, then of course you would never get any legislation through. The reality
here is that we have a government that is seeking to reform workplace relations. We have bill after bill that is voted down here. What this tactic involves is that if you do not like it—if you are a trade unionist who comes into the Senate and you do not like trade union reform legislation—then, of course, the best thing to do is to just keep referring it off and referring it off.

That, of course is exactly what happened with the building and construction industry improvement bills. Those bills have only just come back to the Senate. They were referred off to committees for just under 35 weeks. What Senator George Campbell is now seeking to do is refer off provisions, many of which have been canvassed by the committee that has just reported on the building and construction industry amendments. Those were off there for a total of just under 35 weeks. Senator George Campbell thinks that what we should do now is refer some amendments off for another—

Opposition senators interjecting—

Senator IAN CAMPBELL—Of course you do. There are more trade unionists yelling and screaming. They hate this stuff. What they are now saying is, ‘Let’s refer it for another 10 weeks.’ What they are really trying to do is say, ‘Let’s ensure the Senate doesn’t get to have a vote on these things for over a year.’ Of course, we will come back on 30 September and they will find another reason to have another 10-week inquiry. It will just be 10 weeks plus 10 weeks and, of course, if Senator George Campbell and his comrades had their way, we would never vote on a workplace reform measure. We would never vote on it. That is what he is trying to do here today: he is trying to get us to refer a bill for another 10 weeks and to refer provisions that have already been referred for 35 weeks.

The Senate Selection of Bills Committee, where there is a consensus, refers bills automatically and it is wrong to say that the process has changed here. If there is disagreement over a referral or disagreement over a vote, what we do on the Selection of Bills Committee, and have done for all the many years I have been on it, is ensure that the debate comes into the chamber and is resolved democratically. That may not suit Senator George Campbell but that is what happens every time there is a disagreement on the Selection of Bills Committee. It comes to the floor of the chamber and that is what is happening right here and now. He should not reflect on that process; it is a good process.

Senator MURRAY (Western Australia) (3.57 p.m.)—Because of our numbers I think I should put our position now for the clarification of the Senate. The Workplace Relations Amendment (Codifying Contempt Offences) Bill 2004 is, in all respects, the same as the 2003 bill of the same name. There are six, shall we call them, discrete amendments. Some of them are the subject of some controversy and others are probably not. The first issue I will deal with is the matter of the bill itself. The bill as it is does not need to go to committee, since it replicates its 2003 successor and there is no change to the bill itself apart from those amendments which have already been passed in the committee stage. So we will oppose any attempted reference of the bill to a committee inquiry.

Amendments to the schedule 1 provisions of that bill by us—that is, the first set of the six amendments—do not need to go to a committee inquiry since we will be merely replicating previous Democrat amendments that have already been through the Senate main committee stage of the 2003 bill and that we are recommitting. So we will oppose any attempted reference of those amendments to a committee inquiry. The next three
amendments relate to the building and construction industry. The first amendment I would describe as the 'increasing penalties' amendment. It is wrong to say that increased penalties have not been the subject of a committee inquiry—they have. Whilst the exact quantum is, in fact, lower than it was in the BCI bills, those penalties were in there. Because that matter of penalties has been considered by the BCI committee, we will oppose the reference of that amendment.

The next area of contention is the amendment referred to as the retrospective amendment, which addresses the issue of an existing penalty but closes a loophole on it. It is an arguable amendment—I do not disagree with having the argument—but it attends to an existing provision in the bill and, in our belief, it would merely be a delaying tactic to send that off to committee.

We are left with two contentious matters: the first one is the information-gathering powers amendment, which is the one I think Senator Campbell was referring to in a number of his remarks. The question of powers being granted to regulators was very much a feature of the building and construction industry inquiry, so we do not support that going to committee. The last one is what we would describe as—if I can find the right wording—the amendment which would provide processes for the election of delegates of registered organisations under union rules. A proposition has been put to us that that should go to committee. It is still under negotiation. We have not determined our position on that, so at this stage we are unable to agree that that go to committee. But, as I say, it is still a question of negotiation.

Senator MARSHALL (Victoria) (4.01 p.m.)—This is in fact a very important reference to a committee for very important reasons. I do not think it is completely accurate to say that all these matters have been dealt with before or, if they have not been dealt with in the discussions around this bill, they have been dealt with in other inquiries. I participated in the building industry inquiry and I do not think we did deal specifically with, or go into any detail about, the issue of coercive powers for inspectors. It was certainly raised, but there was no discussion of how the powers would be used, how appropriate safeguards might be put in place and how that might be reflected in legislation.

This bill has been around for a long time—it has been sitting around the Senate and, yes, it has been off to committee before. I am primarily concerned with the civil libertarian aspects of the coercive powers section of the bill. It makes the bill unrecognisable from the bill that we discussed in the Senate some time before in committee stages. It does not try to amend an existing part of the bill; it introduces a whole new section into it. It gives inspectors, who are employed by what we consider to be a politically motivated organisation appointed and created by the government to pursue its own ideological industrial relations agenda, coercive powers. This is a concern to the opposition and me as a senator.

If there were a legitimate reason why those coercive powers were needed, we would be happy to consider that. We need time to consider the evidence that might be put by dissenting parties to us, to consider the civil libertarian aspects of that and to ensure that there are appropriate safeguards for the people it would affect. There are numerous examples—and some were brought out in our committee investigation—that show how overzealous building inspectors have created disputation and uncertainty in this area, and giving them coercive powers may make industrial relations worse.

I suspect what the Democrats are really after in supporting these government
amendments is trying to crack down on any organised crime or criminal activity in the building and construction industry. If that is their objective, we can certainly support that as a party. But these amendments go so much further than that; they are overkill. It would be my submission that they do not address these issues at all. They will be used by the task force to intimidate building workers who may be participating in meetings or discussing issues. There is a case in Victoria. When someone dies at the moment, there is a safety audit. People stop work and ensure that the workplace is safe before they re-commence work. The building industry task force has a view that that is in fact illegal industrial action. It is our view that the inspectors will use their coercive powers to intimidate people, who I think are participating in a very genuine industrial relations activity to ensure that their workplace is safe after a death on a building site. They have every right to do that, and I do not think the building industry task force should be coercing people and applying those sorts of powers.

In another part of the bill there is the issue of the retrospective nature. Again, I do not want to talk about the merits of that particular part of the bill—I understand it is really designed to capture one person at this point in time—but we need to understand what impact that has across the board, what its future impact will be and what the retrospective nature of applying that amendment will have on the existing situation.

These are all matters that should be duly and properly considered by the Senate. The Senate will be unable to consider those matters properly if this bill is brought before us today. In particular, the granting of coercive powers to the task force needs to be referred off to committee for investigation to see how those matters fit within the whole bill. If Senator Murray were prepared to refer that particular section off and we were able to negotiate that, the opposition would be happy to do so. We have very serious concerns about the matters we have raised. We believe they need to be properly dealt with in committee. If we are able to do that in the area of coercive powers as well as the other areas Senator Murray mentioned, I think it would satisfy the opposition.

Question put:
That the amendment (Senator George Campbell's) be agreed to.

The Senate divided. [4.11 p.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes........... 29
Noes........... 40
Majority....... 11

AYES
Bishop, T.M. Brown, B.J.
Buckland, G. Campbell, G.
Carr, K.J. Collins, J.M.A.
Conroy, S.M. Cook, P.F.S.
Crossin, P.M. * Evans, C.V.
Faulkner, J.P. Forshaw, M.G.
Harradine, B. Hogg, J.J.
Hutchins, S.P. Kirk, L.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McLachlan, J.E.
Moore, C. Murphy, S.M.
Nettle, K. O'Brien, K.W.K.
Ray, R.F. Sherry, N.J.
Stephens, U. Webber, R.
Wong, P.

NOES
Abetz, E. Allison, L.F.
Barnett, G. Bartlett, A.J.J.
Boswell, R.I.D. Brandis, G.H.
Calvert, P.H. Campbell, I.G.
Chapman, H.G.P. Cherry, J.C.
Colbeck, R. Coonan, H.L.
Egglesston, A. * Ellison, C.M.
Ferguson, A.B. Ferris, J.M.
Fifield, M.P. Greig, B.
Heffernan, W. Humphries, G.
Johnston, D. Kemp, C.R.
I also wish to move an amendment to the motion moved by Senator Ferris in relation to the Selection of Bills Committee report. I move:

At the end of the motion, add “and, in respect of the Marriage Legislation Amendment Bill 2004, the bill be referred to the Legal and Constitutional Legislation Committee, in accordance with the proposal to the Selection of Bills Committee, for inquiry and report on 7 October 2004”.

We Democrats believe very strongly that for two key reasons this issue really should go for proper inquiry and report by the Senate’s processes. Firstly, it is our fear that progressing swiftly with the legislation, as the government proposes, will have the effect of placing gay and lesbian people and their children in harm’s way—lesbian and gay people and their children will be seen as being used as punching bags for the purposes of an election campaign. We cannot and do not support that.

These are very serious issues. These are issues of relationships that affect people immediately and personally. These are issues of children and family that affect people immediately and personally. The polarised and volatile environment of an election campaign is not the place to properly discuss, debate and resolve such issues. Of course, we support the right and role of a government—and, for that matter, a parliament—to progress and address any issue that it chooses, but to do so in this environment is at best not appropriate and at worst malicious. Naturally, any government, whether that be a Howard government or a Latham government, after the next election will have the right to revisit and look at these issues. Indeed, both major parties could then even present the argument for a mandate on the issue; neither major party could argue that currently.

Secondly, there are serious international treaty issues and constitutional issues which have not been addressed in the unseemly haste of the government to progress this issue. I am proposing, amongst other things, that the committee look at the marriage power within the Constitution and the extent of that power with regard to the creation of marriage law and the recognition of foreign marriages. It is our view to investigate whether the bill raises international comity issues or inconsistencies with laws, policies and standards of domestic and overseas jurisdictions and whether the bill breaches international instruments including the Hague Convention and human rights mechanisms prohibiting discrimination on the grounds of sexual orientation, amongst other things. We Democrats are proposing this. But, if civil marriage is going to be snuffed out and denied to lesbian and gay couples as an option for partnership recognition, what then are the consequences? What are all those areas of Commonwealth law that will continue to discriminate against gay and lesbian people and their children? We have heard nothing from the major parties of any substance in terms of that proposal.

It is our view that we can and should, in the context of this inquiry, look at the opportunities to redress the discrimination that can
and will result with the extinguishment of civil marriage. The proposal not only provides the opportunity to deal with this issue sensitively and to look at the constitutional and international implications but also provides the opportunity to look at ways in which the discrimination can and should be addressed.

An argument has been presented by some religious commentators and conservative politicians that there is urgency in this, that there is a crisis within marriage and the parliament must move swiftly. We argue that that is a nonsense and point out that civil marriage has been available in Canada for exactly one year this month. So the government has known for one year that it was obvious that test cases were going to be taken in Australia. Why then has it been raised at the eleventh hour? We argue that that has been done for cynical political and election campaign reasons and must not be pandered to. We believe strongly that the committee process must go ahead, that it should be dealt with sensitively and that it should be debated outside of the heated and hostile environment of a campaign.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (4.24 p.m.)—I want to make two very brief points. Firstly, the government’s position, which I put to the selection of bills meeting yesterday, is that the bill as a whole not be referred but that the provisions of schedule 2 of the bill be referred. I understand that will not be supported, so we are not going to proceed with it. Of course, our preference is for the bill to proceed. As I understand it, the Australian Labor Party have said publicly that they will be supporting the bill. Today they are voting for the free trade agreement legislation in the other place, yet they are not prepared to support it here because they are going to refer it to a committee. We see this tactic of Labor saying they will support something publicly but, when it comes to trying to get it to a vote, we do not get it here. I hope the Labor Party will support my proposed amendment to Senator Greig’s amendment to change the reporting date from 7 October, which is three months away, to 5 August, which is only six weeks away but still a long time. This would allow the issues to be considered by the committee but also ensure that the parliament has a chance to vote on the legislation. I move:

Omit “7 October 2004”, substitute “5 August 2004”.

Senator LUDWIG (Queensland) (4.26 p.m.)—Labor will be voting for the Marriage Legislation Amendment Bill to be referred to the Senate Legal and Constitutional Legislation Committee to investigate matters of importance, which are whether any provisions of the bill are inconsistent with domestic and international law, policies and standards and whether the bill does breach any international instruments prohibiting discrimination on the grounds of sexual orientation. The inquiry would include the question of why there has been no community consultation in the development of this bill and why the government insisted on its urgent introduction when there are, as claimed by this government, so many other urgent matters to be dealt with.

There has been a clear statement from the shadow spokesperson in the other House, Ms Nicola Roxon, about our position on the bill, but there are matters of principle. A senator has referred the matter to a Senate committee for consideration. You have amended the date to an earlier one without consultation on the floor. The date should stand. The present committee has a number of other inquiries under way. I am sure you have not even bothered to inquire of the committee what workload it has. I think it is a reasonable date—
Senator Ian Campbell—I asked you yesterday.

Senator LUDWIG—And I said there were four. You have taken none of that into consideration.

Senator Ian Campbell—Don’t say I didn’t consult you. I asked you yesterday; that’s consulting. I asked you what the committee—

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order!

Senator LUDWIG—It is not consulting when you just—

Senator Ian Campbell—I asked you yesterday.

Senator LUDWIG—You have had your opportunity to contribute to the debate on this.

Senator Ian Campbell—Don’t accuse me of not consulting.

The ACTING DEPUTY PRESIDENT—Order! Senator Campbell, Senator Ludwig has the floor.

Senator Ian Campbell—It’s just a lie to say you weren’t consulted.

Senator Robert Ray—Grow up and stop accusing people of lying—your old, tired tactic.

Senator Ian Campbell—He was consulted and he says he wasn’t consulted.

The ACTING DEPUTY PRESIDENT—Order! The chamber will come to order. Senator Ludwig has the call.

Senator LUDWIG—I will take that. I do not regard that as consultation. If you want to consult, you can consult with the shadow about the bill or you can consult with the committee chair or the secretariat. I cannot represent them.

Senator Ian Campbell—you are the committee chair.

Senator LUDWIG—I am not. Is that not easy for you to understand?

Senator Forshaw—he’d like to be.

Senator LUDWIG—No, I would not. In any event, what is germane to this is that the Howard government wants to railroad the democratic process. It is not going to do that. This bill should be examined and properly dealt with in the time available. It should be dealt with in the proper way. That is what has to happen, and that is what should happen. The Democrats have put up a reasonable amendment. It should be supported. That is the way it should be proceeded with.

Senator HARRADINE (Tasmania) (4.29 p.m.)—I have a concern about the amendment moved by Senator Greig. I do not mind the Marriage Legislation Amendment Bill being referred to a committee, but when you look at the proposal, you will see that it reads, ‘in accordance with the proposal to the Selection of Bills Committee.’ I have had a look at those proposals and they are entirely anti-marriage. I think it is unfair for this amendment to be placed before the Senate in the way that it has been, if, by accepting this amendment, we are accepting all those things as terms of reference.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! The time for debate has expired. The question is that the amendment moved by Senator Ian Campbell to Senator Greig’s amendment be agreed to.

Question put.

The Senate divided. [4.34 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes…………… 31

Noes…………… 33

Majority………. 2

CHAMBER
AYES

Abetz, E.
Boswell, R.L.D.
Calvert, P.H.
Chapman, H.G.P.
Coonan, H.L.
Ellison, C.M.
Ferris, J.M.
Harradine, B.
Kemp, C.R.
Lightfoot, P.R.
Mason, B.J.
Minchin, N.H.
Payne, M.A.
Scullion, N.G.
Trotz, J.M.
Watson, J.O.W.

Barnett, G.
Brandis, G.H.
Campbell, I.G.
Colbeck, R.
Eggleson, A. *
Ferguson, A.B.
Fifield, M.P.
Johnston, D.
Knowles, S.C.
Macdonald, I.
McGauran, J.J.
Patterson, K.C.
Santoro, S.
Tchen, T.
Vanstone, A.E.

NOTICES

Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 2 standing in the name of Senator Ridgeway for today, proposing the disallowance of the Lands Acquisition Amendment Regulations 2004 (No. 2), postponed till 24 June 2004.

Government business notice of motion no. 1 standing in the name of the Minister for Local Government, Territories and Roads (Senator Ian Campbell) for today, relating to consideration of legislation, postponed till 24 June 2004.

General business notice of motion no. 887 standing in the name of Senator Brown for today, relating to study leave entitlements of Members of Parliament, postponed till 4 August 2004.

General business notice of motion no. 911 standing in the name of Senator Cherry for today, relating to the People's Mojahedin Organisation of Iran, postponed till 24 June 2004.

COMMITTEES

Community Affairs References Committee Reference

Senator FORSHAW (New South Wales)

(4.41 p.m.)—I move:

That the following matters be referred to the Community Affairs References Committee for inquiry and report by 30 September 2004:

(a) the adequacy of current proposals, including those in the 2004 Budget, in overcoming aged care workforce shortages and training;
(b) the performance and effectiveness of the Aged Care Standards and Accreditation Agency in:
(i) assessing and monitoring care, health and safety,
(ii) identifying best practice and providing information, education and training to aged care facilities, and
(iii) implementing and monitoring accreditation in a manner which reduces the administrative and paperwork demands on staff;
(c) the appropriateness of young people with disabilities being accommodated in residential aged care facilities and the extent to which residents with special needs, such as dementia, mental illness or specific conditions, are met under current funding arrangements;
(d) the adequacy of Home and Community Care programs in meeting the current and projected needs of the elderly; and
(e) the effectiveness of current arrangements for the transition of the elderly from acute hospital settings to aged care settings or back to the community.

Question agreed to.

SYDNEY PORTS: PROPOSED THIRD TERMINAL

Senator BROWN (Tasmania) (4.41 p.m.)—I move:
That the Senate—
(a) notes, in relation to plans for expanded container ports in New South Wales, that:
(i) the proposal by Sydney Ports to develop a third terminal at Botany Bay will have a massive detrimental impact on residents and the environment, including increased container truck traffic, threats to internationally-recognised waterbird habitat, contaminated groundwater and beach erosion, and
(ii) the Mayors of Newcastle and Wollongong support the development taking place in their respective cities; and
(b) opposes Sydney Ports’ plan to develop a third terminal at Botany Bay.

Question negatived.
Question agreed to.

**SERPUKHOV-15 INCIDENT**

Senator ALLISON (Victoria) (4.43 p.m.)—by leave—I move the motion as amended:

That the Senate—

(a) recalls the incident that took place in the Union of Soviet Socialist Republics (USSR) at Serpukhov-15 on 26 September 1983 at 12.30 pm Moscow time, and the role of Colonel Stanislav Petrov in this incident;

(b) notes:

(i) that the Serpukhov-15 incident, in which a newly installed Soviet surveillance system reported that the United States of America (US) had launched nuclear missiles at the USSR, is considered by many analysts to have been the closest the world has ever come to nuclear war,

(ii) that the megatonnage that was likely to have been used at that time was between 30 and 60 times the amount required to produce a nuclear winter, and that the number of nuclear weapons that would have been launched would have been enough to end civilisation and kill most living things,

(iii) the role played by Colonel Petrov in refraining from launching a number of thousands of warheads at the US in retaliation and in pressing his superiors to consider the report a false alarm,

(iv) that the Canberra Commission of 1996 recommended that strategic nuclear weapons be taken off ‘Launch on Warning’ status, and

(v) the resolution of the European Parliament of 11 November 1999, and the Senate’s own resolutions as well as repeated calls to lower the alert status of strategic nuclear weapons made by the Non-Aligned Movement and the New Agenda Coalition that have been passed year after year by the United Nations (UN) General Assembly;

(b) offers its congratulations to Colonel Petrov for being presented with the World Citizen Award on Friday, 21 May 2004, in recognition of his actions; and

(c) urges the Government to give support to measures aimed at lowering the readiness to launch nuclear weapon systems and to support such measures on the floor of the UN General Assembly.

Question agreed to.

**FOREIGN AFFAIRS: SUDAN**

Senator STOTT DESPOJA (South Australia) (4.44 p.m.)—by leave—I move the motion as amended:

That the Senate—

(a) notes that:

(i) the ceasefire agreement signed on 8 April 2004 by the Khartoum Government and Darfur’s two rebel groups—the Sudan People’s Liberation Army and the Justice and Equality Movement—has been repeatedly violated,

(ii) there is widespread evidence to suggest that the Khartoum Government has provided support to the Janjaweed militias and is now attempting to integrate them into its official forces,

(iii) it is also alleged that the Khartoum Government has obstructed humanitarian organisations from accessing war-affected areas,

(iv) it is estimated that there are around 1.2 million displaced persons within Sudan and neighbouring Chad,

(v) the conflict has already claimed around 30 000 lives since it commenced in February 2003, and

(vi) estimates of the number of Sudanese who are still at risk range from 350 000 to 2.2 million;

(b) urges the Sudanese Government to:
(i) provide immediate and full access for humanitarian organisations to war-affected populations in Darfur,
(ii) cease logistical, equipment and direct military assistance to the militias, and
(iii) ensure that summary executions by the Government-sponsored militias cease;
(c) welcomes the 25 May 2004 statement by the President of the United Nations (UN) Security Council condemning the violation of human rights and international humanitarian law in Sudan and its call for the Government of Sudan to allow full unimpeded access by humanitarian personnel;
(d) acknowledges the decision of the Australian Government to provide $8 million to meet the needs of persons displaced from Darfur; and
(e) calls on the Australian Government to continue its support for international efforts to bring an end to the crisis in Sudan and, in particular, to make representations to UN Security Council members regarding the need to take decisive action to prevent further loss of life within Sudan.

Question agreed to.

FUEL: ETHANOL

Senator ALLISON (Victoria) (4.44 p.m.)—I, and also on behalf of Senator Cherry, move:
That the Senate—
(a) congratulates the Queensland Government on the announcement of its intention, as part of a wide-ranging blueprint for a campaign to encourage the development of a sustainable Queensland ethanol industry which the Queensland cabinet endorsed on 22 June 2004, to appoint an ethanol advocate and include the 12 900 state government vehicles in the campaign;
(b) notes the Queensland Premier’s call for the Federal Government to ‘mandate the availability of ethanol and indefinitely extend the fuel excise exemption’, to give the fledging industry the certainty it needs to expand;
(c) encourages all states to consider adopting similar action plans; and
(d) calls on the Federal Government to phase in the mandated use of 10 per cent ethanol-blended petrol.

Question negatived.

EDUCATION: UNIVERSITY FEES

Senator STOTT DESPOJA (South Australia) (4.45 p.m.)—by leave—I move the motion as amended:
That the Senate—
(a) notes that:
(i) to date, 23 universities have announced that they will increase their higher education contribution scheme (HECS) fees, most of them by the full 25 per cent across all disciplines,
(ii) increasing HECS fees will further deter students from low socio-economic backgrounds,
(iii) all three South Australian universities will increase HECS fees by 25 per cent in 2005, severely impacting student choice in South Australia, and
(iv) by 2008, the Government’s policy ‘Backing Australia’s future: Our universities’ will have shifted more than $1 billion of the costs of higher education to students through HECS increases and increases in domestic full-fee paying student numbers;
(b) supports students in their attempts to prevent the remaining universities from increasing HECS fees; and
(c) condemns the Government for underfunding universities for the past 8 years to such an extent that universities are now
turning to students to provide a short-term increase in funding.
Question agreed to.

GENE TECHNOLOGY

Senator ALLISON (Victoria) (4.47 p.m.)—by leave—At the request of Senator Cherry, I move the motion as amended:

That there be laid on the table, no later than 6.30 pm on Thursday, 24 June 2004, the following documents, in response to applications 020/2002 (Monsanto) and 021/2002 (Bayer) to the Office of the Gene Technology Regulator (OGTR) for the commercial release of GE canola:

- All submissions from committees formed under the Gene Technology Act 2000 in relation to the above applications, including submissions from individuals in their capacity as members of those committees.

Question agreed to.

GEOSCIENCE AUSTRALIA

Senator ALLISON (Victoria) (4.48 p.m.)—At the request of Senator Cherry, I move:

That there be laid on the table by the Minister representing the Minister for Industry, Tourism and Resources, no later than 6.30 pm on 24 June 2004, the following documents:

- Any assessment or analysis of the synthetic aperture radar work commissioned or acquired by Geoscience Australia, or related documents.

Question agreed to.

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Interim Report

Senator CROSSIN (Northern Territory) (4.48 p.m.)—At the request of Senator Hutchins, I move:

That the Foreign Affairs, Defence and Trade References Committee present an interim report on its inquiry into the effectiveness of the Australian military justice system on 9 September 2004.

Question agreed to.

SYDNEY PORTS: PROPOSED THIRD TERMINAL

The ACTING DEPUTY PRESIDENT (Senator Watson)—Senator Brown, the clerks have drawn my attention to the fact that the call in relation to your motion No. 925 may not have been correct. At the request of the Senate, I shall recommit the motion. The question is that the motion moved by Senator Brown be agreed to.

Question negatived.

Senator BROWN (Tasmania) (4.50 p.m.)—by leave—I record that the Greens and the Democrats supported that motion, and the rest of the chamber did not. I am pleased the matter has been clarified.

COMMITTEES

Legal and Constitutional References Committee

Extension of Time

Senator CROSSIN (Northern Territory) (4.51 p.m.)—At the request of Senator Bolkus, I move:

That the time for the presentation of the report of the Legal and Constitutional References Committee on the needs of expatriate Australians be extended to 5 October 2004.

Question agreed to.

IRAQ

Senator CROSSIN (Northern Territory) (4.51 p.m.)—At the request of Senator Faulkner, I move:

That there be laid on the table by the Leader of the Government in the Senate, no later than 4 pm on Thursday, 24 June 2004, a copy of that part of the Office of National Assessments' (ONA) classified document log which relates to requests for, and movements of, the December 2002 ONA report on the humanitarian impact of the war in Iraq, during the period 16 June to 23 June 2003.

Question agreed to.
Wednesday, 23 June 2004

COMMITTEES

Electoral Matters Committee

Extension of Time

Senator McGauran (Victoria) (4.52 p.m.)—At the request of Senator Mason, I move:

That the time for the presentation of the report of the Joint Standing Committee on Electoral Matters on electoral funding and disclosure and any amendments to the Commonwealth Electoral Act necessary in relation to political donations be extended to 12 August 2004.

Question agreed to.

Scrutiny of Bills Committee

Report

Senator Crossin (Northern Territory) (4.53 p.m.)—I present the eighth report of 2004 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills Alert Digest No. 8 of 2004, dated 23 June 2004.

Ordered that the report be printed.

Senator Crossin—I move:

That the Senate take note of the report.

I want to make some comments in support of this Alert Digest and report presented today. I have a tabling statement which I will seek leave to incorporate. I would like to highlight to the Senate, and to those who may be interested in looking at this Alert Digest and in particular the report, that there are comments attached to this report—and the tabling statement also makes some comments—in relation to the national electricity law, the national electricity code and other rules. In particular, there is comment made on the bill that will be dealt with in this chamber concerning that legislation. So I draw people’s attention to the tabling statement that will be provided with this Alert Digest and the bill in relation to the national scheme and the way in which that will be applied and administered.

This may be my last tabling of a Scrutiny of Bills Committee report and Alert Digest. There may well be another chair doing this in future meetings of the Senate. I want to place on the public record my thanks to the committee staff, the secretariat, and the people who assist in the preparation of these reports. I want to thank those people for the work they do on this committee. I seek leave to have my tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—

As Senators are aware, the Scrutiny of Bills Committee considers legislation to ensure that it complies with appropriate civil liberties and principles of administrative fairness. It does this by bringing to the attention of the Senate provisions of bills which may infringe upon personal rights and liberties, or delegate legislative powers inappropriately or without sufficient parliamentary scrutiny.

In keeping with this principle, the Committee would like to take this opportunity to draw to the attention of the Senate an item in Digest No 8 of 2004 that highlights an important aspect of its work.

This Committee, together with the legislative scrutiny committees of the States and Territories, co-operates in the scrutiny of national legislative schemes. In October 1996, the Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia published a Position Paper titled Scrutiny of National Schemes of Legislation in which it highlighted the difficulties that scrutiny committees experienced in examining legislation that was made as part of a national scheme. Essentially, these difficulties arise because ‘national scheme’ bills are devised by Ministerial Councils and are presented to Parliaments as agreed and uniform legislation.

These schemes present particular challenges for scrutiny committees, because they usually deal with important matters that have been through a lengthy intergovernmental consultation before agreement has been reached on the legislation. In addition, legislation is often introduced in one
jurisdiction and applied or adopted in the other jurisdictions that are party to the agreement. These procedures are sometimes used as a reason to attempt to lessen or exclude parliamentary oversight. Any requests for amendment are seen to threaten that agreement and that uniformity.

The Chairs and Deputy Chairs of Commonwealth, State and Territory Scrutiny Committees continue to note difficulties in the identification and scrutiny of national schemes of legislation. To assist in the early identification of national schemes of legislation, the Committee notes in its Digest those bills that give effect to such schemes as they come before the Committee for consideration.

Digest No 8 of 2004 identifies the Australian Energy Market Bill 2004 as national scheme legislation. This bill provides for a national legislative framework for the operation of an Australian energy market by applying the National Electricity Law, the National Electricity Code (and other Rules) and regulations under the National Electricity (South Australia) Act 1996 (SA) as Commonwealth law in offshore areas. The bill also contains a regulation-making power to allow regulations to prescribe further State and Territory energy laws to be applied in the offshore areas. This is template legislation originally enacted by South Australia and applied by the Commonwealth, the eastern States and the ACT.

The energy reforms provide for the establishment of two new bodies, the Australian Energy Regulator (AER) and the Australian Energy Market Commission (AEMC). The Australian Energy Market Commission (AEMC) will be established by South Australian legislation and will be responsible for rule-making and market development. The Australian Energy Regulator will be established by the Commonwealth through the Trade Practices Amendment (Australian Energy Market) Bill 2004. The regulator will be responsible for the economic regulation of the Australian energy markets and will perform functions and exercise powers as conferred by the Commonwealth, State and Territory legislation. It is envisaged that the legislation will improve the quality, timeliness and national character of the Australian energy market and enable the electricity market rules to apply consistently across all participating government jurisdictions.

The Committee has noted that Clauses 6 and 7 of this bill would apply as a law of the Commonwealth legislative provisions set out in Schedule 1 to the National Electricity (South Australia) Act 1996 of South Australia and regulations made thereunder. When these provisions of South Australian law become part of the law of the Commonwealth, they will not have been considered either by this Committee or by the Regulations and Ordinances Committee. Clauses 6 and 7 would delegate the legislative power of the Commonwealth. As this bill is part of a national scheme of legislation, the Committee has left for the consideration of the Senate the question of whether that delegation is appropriate.

Question agreed to.

Treaties Committee
Report

Senator KIRK (South Australia) (4.56 p.m.)—On behalf of the Joint Standing Committee on Treaties, I present the 61st report of the committee entitled The Australia-United States free trade agreement. I move:

That the Senate take note of the report.

Senator MARSHALL (Victoria) (4.56 p.m.)—The United States free trade agreement is the most significant bilateral trade agreement to be negotiated by Australia in overall terms. Unlike the Singapore-Australia free trade agreement and the Thailand-Australia free trade agreement, the US free trade agreement requires relatively extensive legislative and regulatory change to a number of existing domestic arrangements in a number of areas.

It is for this reason that general community interest in the Australia-United States free trade agreement has been much higher than it was with respect to both the Singapore-Australia free trade agreement and the
Thailand-Australia free trade agreement. It is also for this reason that both the Joint Standing Committee on Treaties, JSCOT, and the Senate select committee considering the Australia-US free trade agreement have been required to undertake more extensive inquiry into this particular agreement than might have occurred with respect to the other free trade agreements Australia has entered into.

The role of the Joint Standing Committee on Treaties has been to analyse the evidence provided to the committee, and to do this without bringing a prejudiced or biased view to the inquiry and the agreement. Unfortunately, this position has not been adopted by all members of the committee. The committee chair, Dr Andrew Southcott, declared his support for the Australia-US free trade agreement prior to citing the written text of the agreement or receiving any evidence to support his position. Earlier this year, in a newsletter produced by Dr Southcott called the ‘Boothby Bulletin’, prior to the proposed US-Australia free trade agreement being tabled in the parliament, he stated:

The FTA is great news for a whole range of manufacturing and farming sectors.

Further:

I look forward to reviewing and reporting on the benefits of the free trade agreement as my capacity as chair of JSCOT.

Clearly Dr Southcott had already made up his mind. He conveyed that to all his constituents through his ‘Boothby Bulletin’ newsletter prior to seeing the text of the agreement or taking any evidence. I think it is inappropriate for the chair of a committee that is supposed to be investigating whether this treaty is in the Australian national interest to prejudge the operations of the committee in such a way. It is the role of JSCOT to ensure that any agreement brought before it is, on the balance of the evidence provided to the committee, in the Australian national interest and, if it is so, to recommend that binding treaty action be taken. It is unfortunate that this undisguised bias affected the conduct of the committee, undermined the integrity of the inquiry and discredits the majority report.

In order to fulfil the requirement of JSCOT, members must be satisfied that the treaty process has been conducted in a transparent fashion, that the finalised agreement meets the objectives of Australia’s long-term international trading aims and that it does this without compromising Australia’s ability to make laws and regulations in areas where that may be required or where it would want to do so in the future. Whilst a significant proportion of the majority report reflects the evidence presented to the committee, it fails in some areas, due to the biases of particular members of the committee, to reflect the whole body of evidence presented to the committee. Due to the reflection of biased evidence in some areas, the recommendation at the conclusion of the report that advocates that binding treaty action be taken should be seriously questioned. The committee’s recommendation blindly ignores the full body of evidence made available to it and regularly relies on simple assurances from the Department of Foreign Affairs and Trade about unknown consequences. It fails to fulfil the requirement set for the Joint Standing Committee on Treaties—that is, to ensure that the treaty as it stands is, without doubt, in Australia’s national interest.

I accept the general thrust of most of the committee’s recommendations and note that there is some merit, and some benefit to Australia, in some areas of the agreement. We do accept and acknowledge that. But throughout the committee’s report there are 22 recommendations that every member of the committee agreed to. A number of those recommendations themselves find fault with the agreement. If the agreement were in Austra-
lia’s national interest, there would not need to be 22 recommendations signed on to by every member of that committee. They actually identify the flaws in the agreement. The problem we have with this agreement is that we are unable to go back and renegotiate it with the United States to correct the flaws that quite rightly have been identified and agreed to by all the government members on the committee. We are unable to do that.

What has been put in front of us is simply whether we should take binding treaty action. Clearly, based on the evidence and the fact that there are 22 recommendations that find fault with the agreement, certainly the Labor Party members of the committee fail to be convinced at this point in time that this agreement is in our national interest. We want to find out more about how the agreement will operate and how our national interests will benefit from this agreement. The recommendations to alter what has been negotiated are, in themselves, the agreement’s fatal flaw. The agreement cannot be changed. Due to the sheer number of recommendations made, the number of areas in the agreement that they cover and the extent of the problems identified, as well as the fact that the JSCOT and the entire process is based on a take all or nothing option, dissenting members simply cannot in all good conscience advocate that binding treaty action be taken with respect to the Australia-United States free trade agreement as it stands.

That was made clear to the committee chair. The dissenting report is clear. Much was made of that by Dr Southcott this morning. When he tabled the report of this committee in the House of Representatives today he said: ‘The dissent does not say vote it up and it does not say vote it down. All it says is that more time is required.’ That is not all that it says. It is a page of a number of paragraphs that identify many areas of concern that the dissenting members have and it puts in place a process and recommends where we need to go from here. What the dissenting report clearly does say—and, again, Dr Southcott fails to recognise this—can be seen at the last paragraph, where the dissenting members of the committee recommend:

Binding treaty action should not be taken until adequate opportunity has been given to consider the necessary legislative, regulatory and administrative action that underpins the implementation of the treaty in order to ensure that the combination of the treaty and the associated domestic action is, when taken together, in the national interest. This decision can only be sensibly taken on an informed basis when the relevant measures are tabled before the parliament or detailed statements are made to parliament on the structure of non-legislative mechanisms or issues.

I would submit that that is the only proper conclusion that anyone who went through the extensive inquiry and considered the matters before the committee could take. What I accept is that, given the biased nature of many members of the committee—and clearly that includes, Dr Southcott, as I have indicated in my contribution so far—I for one want to wait and see what the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America will do. I know that the experienced people on that committee will conduct a forensic and detailed investigation of the matters of this agreement.

One of the other very disappointing aspects I found in the JSCOT process was that, right up-front, I signalled my sincere concerns about the potential job impacts of the agreement. I put those concerns to DFAT at the very beginning of our discussions. I clearly asked them whether the econometric study they were going to commission would detail those job impacts on sectoral, regional and industry bases. They indicated that they would and that they would ask for the econometric study to include that detailed study. They did not; the econometric study
did not do that. When I confronted the author of that study after he had concluded it he indicated that he was not asked to do that work and that, if that work needed to be done, they would have to go back and use a different model to get an effective outcome. That makes us rely on other studies that have been done, which clearly indicate that there is a significant concern about job losses as a result of this agreement. The study I refer to—the National Institute of Economic and Industry Research study—indicates that an average of 57,000 jobs, and in a worst-case scenario 150,000 jobs, could potentially be lost annually as a result. I do not know whether that is true, but I wish the government-commissioned study had gone to that question and given us some indication on that matter. (Time expired)

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (5.06 p.m.)—I seek leave of the Senate to incorporate a single-page dissenting view of the 61st report of the Joint Standing Committee on Treaties.

Leave granted.

The document read as follows—

Joint Standing Committee on Treaties—Report into Australia-US FTA

Democrats Dissenting View

The ‘national interest’ is about more than basic economic considerations. It is also about our social and labour standards, the preservation and improvement of our environment and our national cultural identity, and these must also be taken into account in any trade decisions.

Wide-ranging trade agreements such as this FTA will have an impact on every facet of our economic, social and cultural framework and they must be assessed in terms of what has been won against what has been traded away.

These decisions will also have a critical impact on our national sovereignty more generally—the terms of this agreement will affect our ability to regulate freely in the national interest in future.

The deal has very serious shortcomings from an Australian perspective. While the Government says critical areas such as the PBS, intellectual property, Australian content in media, quarantine and foreign investment have been protected, these claims are not supported by the evidence in the text and many of the submissions received by this Committee have made this very clear.

The Democrats have been on the record continually expressing our serious concerns about the impact of the deal on: the PBS (including generic drugs), Australian culture and media, intellectual property, foreign investment, quarantine standards and the delivery of public services.

This deal cannot be analysed in terms of minor economic benefit for a small number of sectors. We must look at the big picture and assess the entire agreement on balance to determine what is best for Australia’s future. We have looked at the detail carefully, both through this JSCOT Inquiry and the Senate Select Committee, and have reached the conclusion that the deal cannot be supported.

The Government is rushing through the tabling of this JSCOT report, paying a token nod to the scrutiny process before they rush the FTA legislation into Parliament.

There will be no time for the Parliament to properly consider the evidence and the findings of the JSCOT inquiry—members of the House will be forced to make an immediate decision. This is a dangerous path to take with Australia’s future at stake.

The Democrats will continue to focus their energies on the Senate Select Committee process, to ensure that the real impact of this deal is properly assessed and reported to the Parliament.

Senator Andrew Bartlett

Senator BARTLETT—I thank the Senate. I asked for leave to incorporate that document because of a communication complication. I thought I had slightly longer than I did to get in dissenting comments to be incorporated in the report, so I bear responsibility for that, but I have now incorporated a dissenting view into the Hansard. The simple matter, in speaking to this report of the
Joint Committee on Treaties on the US-Australia free trade agreement, is that the Democrats believe we should not be taking binding treaty action by passing enabling legislation. Our view is that the overwhelming benefits that have been promised through this agreement are not there. The bottom line in pure economic terms has been grossly overstated and at best might result in a small gain for a small number of sectors. The government-commissioned economic analysis of the free trade agreement has been widely criticised by respected economists. In fact, as Professor Garnaut expressed it, the CIE report ‘does not pass the laugh test’. CIE gave the government the report they paid for and told them exactly what they wanted to hear. Dr Philippa Dee of the Australian National University has conducted a thorough analysis of the agreement, correcting the assumptions of the CIE report, and she agrees that the bottom line economic benefits of the FTA are hard to find. I note that Dr Dee is giving evidence to the Senate committee hearing on the free trade agreement this evening.

It has to be emphasised that it is the Senate that will be making the pivotal decision on this issue, and that is as it should be. Agreements as far reaching as this should not be entered into simply on the basis of a decision of a government without proper scrutiny and examination of the issues by the parliament. That is the job the Senate is doing. It is one more reminder of why, whoever it is people choose to have as Prime Minister, they need the strongest possible Senate to keep an eye on what the government tries to do.

Even though it is hard to find much in the way of bottom line economic benefits, there are significant costs in the agreement. The government is making social policy decisions through trade agreements. It is attempting to lock in commitments on important matters that should be the focus of much wider public debate in this country, commitments that will mean we will have less ability to regulate in our national interest in the future. The most important thing, and the simple fact to assess, is whether this is a net benefit for the Australian people, whether it secures our national interest. Despite my focus just then on the bottom line economic benefits, it must also be stressed that the national interest is about a lot more than simply basic economic considerations. It is also about our social and labour standards, the preservation and improvement of our environment and our national cultural identity. These also must be taken into account in any trade decisions. This sort of wide-ranging agreement will have an impact on every facet of our economic, social and cultural framework, and that must be assessed overall against what has been won and what has been traded away.

My view is that the deal does have some very serious shortcomings. The government has said, and some of the evidence that was presented on its behalf to this inquiry suggested, that critical areas such as the Pharmaceutical Benefits Scheme, intellectual property, Australian content in media, quarantine and foreign investment have been protected, but I believe it is fair to say that other evidence presented to the inquiry does not support that claim. The Democrats have been on the record continually expressing our serious concerns about the impact of various aspects of the deal and highlighting those. We do not in any way suggest that it is universally bad in all respects; nonetheless, we have significant concerns about significant components, particularly the issues to do with intellectual property and copyright. I note that just yesterday we tabled some treaty agreements on the World Intellectual Property Organisation, WIPO, which would be entered into if enabling legislation were passed and linked also to the free trade
agreement. There are also serious concerns about quarantine standards that have been shown to have validity through other Senate committee processes. We have concerns as to Australian culture and media, areas like the PBS and also, very importantly, the publication of public services. So there is a range of issues that cannot be analysed in terms of purely economic benefit. We must look at the big picture and assess the entire agreement on balance.

We have looked at the detail carefully. I should, as always, note the value of the treaties committee. I do think that in this area it has also been valuable to have the Senate committee process. My colleague Senator Ridgeway is on that committee, a committee that is not controlled so directly by government numbers, and I think the further examination work that that committee is doing is of benefit and will enable the Senate to make a fully informed decision. The Democrats have reached a view and we think it is validly justified by the evidence. The decision is still to be made by the Senate, and that is where the key decision will be made, about whether this agreement does enter into force. Entering into the agreement is one decision that the Democrats will not be supporting.

The key decision now rests with the Labor Party. They have appropriately outlined some of their concerns with this agreement. I would have to say, particularly after their announcement overnight of their backdown on PBS costs, that it is hard to be sure about how much faith to put in the concerns that they have raised, including the concerns about PBS costs through the free trade agreement, but that remains to be seen and obviously the onus is there for any decision made to be justified. I believe the Democrats’ decision is justified by the evidence and our view about what constitutes the public interest.

I think there is a need for a broader, more informed debate on trade matters and issues to do with bilateral agreements versus multilateral agreements. Some of the criticisms against trade agreements lean too far towards isolationism and do not consider some of the much more dynamic components of international trade. I would like to see a more informed and wide-ranging debate on these sorts of issues over the coming months and years, because clearly these sorts of issues of how best we exchange not just goods but, even more importantly, services, capital and indeed people—that is, the movement of people, capital and services around the globe as well as goods—will obviously be with us into the future. We need to explore the issues that arise there perhaps in a more fulsome way than occasionally occurs with debate in this country. Having said that, I believe the evidence presented, both through this inquiry and thus far through the Senate inquiry, does very much justify the Democrats’ decision that this bilateral agreement is not in Australia’s interests on balance because of the impacts on a number of key areas. That is a position that the Democrats at least will be consistent on when any legislation relating to this comes up in the Senate.

Senator MASON (Queensland) (5.14 p.m.)—I rise to contribute to the debate on the Australia-United States free trade agreement and the report of the Joint Standing Committee on Treaties. It is moments like this that I think of Mr Gough Whitlam.

Senator Colbeck—It’s a scary thought.

Senator MASON—It is a scary thought. Mr Whitlam left an appalling economic legacy to this nation. He was profligate and the country took years to recover. But he knew one thing about the economy and about trade and that is that tariffs are a tax on working people, lead to a lowering of living standards, are a tax on the lifestyle of ordinary
Australians and that to move towards freer trade is good not only for Australians but for all people, particularly those in the Third World who seek access to Western markets. Even Mr Whitlam, 30 years ago, knew that free trade was important.

The agreement before us this afternoon will be worth thousands of jobs and billions of dollars over the medium to long term, yet absolutely unbelievably the alternative Prime Minister and the opposition do not have a position on the most important trade agreement in living memory. They do not have a consistent position on adopting the most important trade agreement in living memory. This is despite the fact that it took 10 months to negotiate the agreement and a further five months for it to be examined by the Joint Standing Committee on Treaties. Labor does not know what its position on the free trade deal is—and it does not even know what it should be. Devoid now of any sort of ideological roots, and simply now a party for opportunists and spivs, it does not have a consistent position.

Let me quote Paul Kelly on page 15 of today’s Australian. He says this: ‘A strange coalition of old-fashioned protectionists, global free traders, special interests, anti-American prejudice and a concern over the Pharmaceutical Benefits Scheme has pulled Labor towards rejecting the free trade agreement with the United States. Labor speaks with many voices on this subject. It tries to be all things to all people. Mr Gavin O’Connor, the agriculture spokesman for the Labor Party, told the National Farmers Federation yesterday that he accepted there were some important gains for agriculture in the free trade agreement. Meanwhile my friend Senator Carr, the shadow industry spokesman, said he was deeply concerned about the effect the FTA would have on vehicle and component manufacturers, yet on page 4 of today’s Australian Financial Review I read:

Opposition trade spokesman Stephen Conroy has privately told a number of business figures that while 40 per cent of his party was against the FTA, Labor would ultimately support the trade.

This shambolic—

Senator Troeth—Very puzzling.

Senator MASON—Thank you, Senator Troeth. This puzzling and shambolic policy position of the Labor Party is owned, remember, by the alternative government. They want to be in government, yet they cannot get their act together on the most important trade deal of the second half of the 20th century. They just cannot get it right.

At the same time that this is going on, Labor’s left faction and some key unions like the Australian Manufacturing Workers Union are lobbying very hard for the Labor Party to reject the deal. Mr Doug Cameron—I know he is a friend of the minister on duty, Senator Abetz—told the state and federal Labor leaders at the Labor Party conference in January they were like Pavlov’s dog, blindly following ideology. Mr Cameron said that the Labor ‘leadership are drooling over the myth’. He also said, ‘There is no such thing as free trade.’

Two weeks ago the Queensland state Labor conference passed a motion proposed by delegates from the Australian Manufacturing Workers Union, an electrical trade union, condemning the free trade agreement as a dud deal and calling on the Labor Party to oppose it. Yet all the Labor state premiers are supporting the free trade deal. What an absolute fiasco. Mr Beattie, the Queensland Labor Premier, has stated the free trade agreement would be the most momentous boost to primary industry in 100 years. The South Australian Labor Premier, Mr Rann, has stated the free trade agreement would give Australian industry access to 280 million American customers. And the New South Wales Labor Premier, Mr Carr, has said the
A free trade agreement is very much in the national interest. So we have got some sensible people in this debate, but as usual the Labor Party is swamped by the special interest groups, the old socialists, the Vietnam generation swingers and the silly anti-American posers—including a rock singer or two—who are all opposing the deal.

Senator Crossin interjecting—

Senator MASON—What do the Labor Party need, Senator Crossin? What the Labor Party need amidst all this is leadership. That is precisely what they do not have. What does Mr Whitlam’s acolyte, Mr Latham, think about all this? Remember in January what his view was? His view was: no sugar, no deal. Then he thought, ‘Gee, even if we’re no worse off, even if the sugar farmers are no worse off, the rest of Australian industry, mining and agriculture can go to hell.’ That was the implication of the first Latham view. That was Labor Party policy mark I—a total farce and a total failure. Great leadership from the Leader of the Opposition—the guy who wants to be our Prime Minister.

Instead of concentrating on the most important trade deal in 50 years, the alternative Prime Minister was reading books by former President Clinton’s adviser Mr Dick Morris. He was talking to all of us about reading to children, childhood vaccinations and plastic bags—which are all important. Motherhood is important, too. They are all important. But he could not make the tough decisions about free trade. He could not make the decisions that secure Australia’s national interest. He would rather talk about woolly values, but he has absolutely no policy basis or policy structure behind these platitudinous views and values that he parades around the Australian community. It is absolutely pathetic. You do not deserve to be Prime Minister of this country unless you can make the tough decisions and the tough calls. Can you imagine going into an election campaign—and we could do that at any time—when Labor does not have a position on the biggest trade deal in the history of our nation?

Mr Latham says that he is not anti-American. But much of his party is—although I do remember, sadly, some embarrassing moments, some sad observations, that Mr Latham placed upon President Bush at one stage. I remember the embarrassing comedown in front of the American flag and the recriminations. But let us not go over that; let us not talk about the history. While Mr Latham thinks that the American alliance is important—he says that he agrees with it—an important part of any alliance is its military aspects. Mr Latham does not seem to support the military aspects of the alliance. He is against the trade parts of the alliance as well—he does not seem to support the free trade agreement. So what part of the alliance does he support when he is against both the military and the trade aspects of our alliance with the United States? What is he in favour of? Not very much. Mr Latham does not deserve to be Prime Minister of this great nation unless he can make the tough decisions in the national interest, and he should do so now.

Senator TCHEN (Victoria) (5.24 p.m.)—I do not think it is possible to provide a better analysis of Labor’s position than my colleague Senator Mason has provided, so I shall not even try. I would like to make my contribution to this debate about the Australia-US free trade agreement from a different angle. I was a little bit surprised to hear Senator Mason describe Mr Whitlam as someone who is knowledgeable about the economy. I am somewhat older than Senator Mason, so when Mr Whitlam was Prime Minister I was already a taxpayer. What I remember about Mr Whitlam was his ability to stuff up Australia’s economy. However, perhaps memory gets softer over the years,
and Senator Mason’s view is probably more charitable to Mr Whitlam.

The Joint Standing Committee on Treaties inquiry into the Australia-US free trade agreement produced a report of 302 pages, which was tabled earlier in this chamber by Senator Kirk. The committee received 215 submissions and conducted nine public hearings during the inquiry. There was also an initial briefing by government departments on the free trade agreement itself. During the department briefing we heard from 10 Commonwealth agencies, represented by 28 officers. In the nine public hearings conducted over a period of one month in April and May the committee heard from 99 witnesses representing 45 organisations. They included three unions, one of which was the Australian Manufacturing Workers Union, represented by Mr Doug Cameron, whom Senator Mason mentioned. Mr Cameron is a great friend of Senator Abetz! The committee also heard from seven departments of the Western Australian government and from five individuals. There were 11 second appearances by Commonwealth departments.

This list does not include seven other private committee meetings held over the last two weeks, during which the committee spent hours considering the chairman’s draft report. In the interests of obtaining a unanimous decision on an issue as important as the Australia-US free trade agreement, which allows Australia free entry into the very important US markets, the chairman of the treaties committee, Dr Andrew Southcott, bent over backwards to ensure that we had consensus within the committee. We spent hours going over the report, crossing every t and dotting every i. At the wish of the Labor members of the committee, we included every possible reference that seemed to be favourable to Labor’s position. The committee secretariat—Gillian Gould, Julia Morris, Geoff Binns, Patricia Tyson, Carolyn Littlefair and Jennifer Cochran—for their hard work.

However, this attempt in the spirit of achieving consensus within the parliament on such an important issue came to nought when at the last moment—not at one minute to midnight but at midnight—the Labor members of the committee came up with a dissenting report. They never had any intention of coming up with a consensus report. What did the dissenting report say? In simple terms: ‘Yes, we agree. Yes, this is a good thing. We should have a free trade agreement with the United States, but not yet. Let us wait. Let us play around with it a bit more.’ This really attacks the fundamentals of the parliamentary committee system. The committee system, where we try to achieve consensus on behalf of the Australian community, was held in contempt by the Labor Party throughout this process. They went through the charade of agreeing to try and achieve consensus, but at the last moment they whipped out a two-page dissenting report and said, ‘Yes, we agree with everything but we disagree.’ It makes the whole thing a joke.

Senator Mason quoted a commentator from the Australian newspaper, but I think the comment in the Australian’s editorial today is even more telling. It describes Labor’s policy switchback yesterday not only on the free trade agreement but also on the Pharmaceutical Benefits Scheme and the private education grants as ‘a stunning series of half-pikes and backflips that changed all sorts of policy positions’. This is where the Labor Party is at the moment. It is coming into an election after eight years in opposition and it is still doing half-pikes and backflips on important policy positions, not least of which is its attitude to free trade. Yet we should never underestimate the skill and the
smartness of the Labor Party. It is very careful with this. All of these backflips contain a proviso that says that when it comes into government it might do it quite differently. This is described in the *Australian* editorial as ‘qualifying weasel-words’. They are nothing more than that. The Labor Party simply cannot make up its mind on any important issues, notwithstanding the importance of this decision on Australia’s future, the Australian community, Australian jobs and Australian welfare. I go back to the point I made earlier about the importance of the institution that makes this parliament function. Today is a very sad day indeed as far as that is concerned, with the Labor Party playing around with such important decisions as the inquiry into the Australia-US free trade agreement.

Question agreed to.

**DELEGATION REPORTS**

**Parliamentary Delegation to New Caledonia and Vanuatu**

*Senator Watson (Tasmania) (5.33 p.m.)—by leave—I present the report of the Australian parliamentary delegation to New Caledonia and Vanuatu, which took place from 11 to 22 November 2003. I seek leave to move a motion to take note of the document.*

Leave granted.

*Senator Watson—I move:

That the Senate take note of the document.

I seek leave to incorporate a tabling statement in *Hansard*.

Leave granted.

*The statement read as follows—*

Last November an Australian parliamentary delegation visited New Caledonia and Vanuatu. The delegation was the first official Australian parliamentary bilateral delegation to visit New Caledonia since 1993, and Vanuatu since 1997. It was an honour for me to lead the delegation, as I had the privilege of visiting both countries over 20 years ago and, in Vanuatu’s case, was present at the time of its independence celebrations.

The delegation’s visit came at a time when Australia’s relationship with the South Pacific was under renewed scrutiny. In undertaking the visit we were mindful of increasing concern within Australia that the wider Pacific community is not doing as well as it should on a range of political, social and economic measures.

The delegation visited New Caledonia from 11 to 17 November, meeting senior political, business and community leaders in the capital, Noumea, and throughout New Caledonia’s provinces. The delegation then visited Vanuatu from 17 to 22 November, again undertaking high-level meetings in the capital, Port Vila, and visiting Australian-financed development projects on Vanuatu’s main island, Efate. The delegation was warmly received in both countries, with the visits attracting considerable interest and a high level of positive media coverage. Perhaps the most important message we received from both countries’ leaderships was their unequivocal support for Australia’s role in the region.

New Caledonia is in many respects a regional leader in terms of economic performance and standards of governance, assisted greatly by France’s substantial financial and other support. One of the delegation’s objectives in New Caledonia was to gain a better understanding of the current operation of the 1998 Noumea Accord, which defines New Caledonia’s relations with France and sets out a timetable by which New Caledonia will assume responsibility for most areas of government. The Noumea Accord commits France to conducting as many as three referenda between 2013 and 2018 on whether New Caledonia should assume powers from France in relation to justice, public order, currency, defence and extra-regional affairs, effectively becoming fully independent.

The delegation was pleased to find that all mainstream political parties appear committed to the Noumea Accord process. Not surprisingly there were some points of contention; the pro-independence political parties expressed concern to us over inadequate definition of which residents of New Caledonia are entitled to form the electorate for future elections or referenda con-
ducted under the auspices of the Noumea Accord. They also expressed a strong desire for a more equitable distribution of wealth between the capital, Noumea, and the rest of New Caledonia; and expressed a desire for Kanak culture and language to feature more prominently in New Caledonia’s education system, which they feel is presently weighted too far towards the curriculum of continental France.

Despite these issues, the delegation’s assessment was that the Accord is working very effectively to moderate the tensions that might otherwise exist between the pro- and anti-independence factions. New Caledonia’s mainstream political representatives appear to have observed the situation elsewhere in the Pacific and agreed that any move to independence—should that be the ultimate outcome of the Noumea Accord process—needs to be peaceful and to take account of the continued economic prosperity of New Caledonia.

Economic and trade issues featured prominently in the delegation’s program. New Caledonia provides a diverse range of opportunities for Australian companies, including mining equipment and systems, infrastructure, food and beverage, education and training, and marine vessels and equipment.

The delegation was impressed by the economic good health and sound governance of New Caledonia (in particular Noumea), and by signs of a commitment to economic development outside of Noumea. The delegation was also impressed by the scale of France’s ongoing financial commitment to New Caledonia.

However, we noted that New Caledonia remains a highly sheltered economy. Duties on most imports are substantial, and all imports must meet EU standards, imposing constraints on sourcing business inputs from regional countries including Australia. In addition, there is a lack of recognition of Australian professional qualifications, which limits the opportunities to further promote Australian education and training.

These barriers work to the disadvantage of Australian business, and the delegation expects that these issues will continue to be pursued in trade negotiations with France, the EU and, increasingly, with the New Caledonian government as it assumes greater autonomy. Of equal concern to the delegation is the potential effect of these barriers on the people of New Caledonia. Such restrictions have the capacity to distort the cost of doing business in New Caledonia, and subsequently affect the viability of potential investments in the country. Australia should continue to convey to the New Caledonian government, as it assumes greater responsibility for economic policy, the lasting benefits to Australia of our own process of economic liberalisation over the past two decades.

New Caledonia has a quarter of the world’s known nickel reserves. The local economy is consequently driven by the nickel industry, which accounts for 11 percent of GDP, 90 percent of exports and employs 3200 workers. The nickel processing sector is set to expand significantly with two major projects planned, namely Inco’s project at Goro in the Southern Province and SMSP/Falconbridge’s project at Koniambo in the Northern Province, both of which were visited by the delegation. If they come to fruition, these massive ventures have the potential to generate wealth outside of Noumea and to enable New Caledonia to add more value locally to its natural resources. Inco asserted that the Goro plant, once operational, would add eight to 10 percent to New Caledonia’s GDP. Falconbridge, for its part, claimed the Koniambo project would inject US$242 million per annum into the economy. Both projects also have potential economic benefits for Australia as a leading exporter of mining services and inputs.

On regional issues, discussions with New Caledonia’s political leaders demonstrated an understanding of Australia’s position on regional affairs, with general acceptance of our leading role in the assistance mission to the Solomon Islands. The French High Commissioner in New Caledonia noted that the economic divide between the “wealthy South Pacific” (including New Caledonia) and the rest of the region was an issue that countries such as Australia and France would need to address.

New Caledonia is also home to the Secretariat of the Pacific Community (SPC), the oldest of the inter-governmental regional organisations based in the Pacific. The SPC, which we visited in Noumea, provides advice and support to Pacific
countries in the areas of land, marine and social resources. Australia contributes some 40 percent of the SPC’s combined core and program funding, and has historically made a significant contribution to the governance of the organisation.

After its discussions in New Caledonia, the delegation is able to report that Australia’s funding for the SPC is being put to good use. The programs being run by the SPC are vital to the future prosperity of the Pacific, and the organisation appears to have gained renewed relevance and focus under the stewardship of Ms Lou Pangelinan, who has been Director-General since January 2000.

In summary, the delegation found that there are good opportunities at present to further progress relations with New Caledonia. We were pleased to see that New Caledonia is assuming a wider role in regional affairs, and indeed may be an increasingly important partner for Australia in promoting shared values in the region. We also found senior decision-makers to be well-disposed towards Australia, with many having strong personal and family links.

Australia also enjoys a friendly, broad-based relationship with Vanuatu. Australia is Vanuatu’s largest aid donor, has a significant resident population in addition to regular tourist visits, and has a range of linkages at the government, business and community level. Australia is also the major source of Vanuatu’s imports and investment.

The program for the delegation’s visit to Vanuatu saw it travel widely throughout the country’s main island, Efate. We met senior political representatives and visited a diverse range of institutions, including a round of visits to projects funded by Australia through AusAID and the High Commission’s Direct Assistance Program (DAP).

By international standards Vanuatu is a poor country. Some 40 percent of all Ni-Vanuatu, and 51 percent of those living in rural areas, have incomes below US$1 per day. An estimated 25 percent of the population is engaged in paid employment, with a further 67 percent engaged in subsistence farming.

A central feature of the bilateral relationship is Australia’s strong support for reform. Vanuatu has been pursuing a wide-ranging “Comprehensive Reform Program” since 1997 with assistance from the Asian Development Bank and international aid donors, including Australia. The reform program envisages major improvements in services delivery, economic management and public sector management, as well as economic growth led by the private sector.

The delegation’s discussions with Prime Minister Edward Natapei, and other political figures in Vanuatu, demonstrated an awareness of the problems facing the country. The Prime Minister noted that Vanuatu is enjoying a period of relative political stability and modest economic growth. He candidly admitted that political instability, and Vanuatu’s past record of being receptive to questionable business activities, have not assisted the country to develop a secure future. The difficulties being experienced elsewhere in the region have also not helped Vanuatu’s cause in seeking international investment.

The delegation’s discussions with Mr Natapei indicated broad support for Australia’s role in the region, appreciation for Australia’s aid assistance (and endorsement of the current thrust of that assistance) and an awareness of the need for further economic and governance reforms.

In terms of parliamentary links, the Committee notes that further assistance to Vanuatu’s Parliament may be possible. The then Speaker, the Hon Henri Taga, indicated that reform of the parliamentary system is a priority. Vanuatu has recently created an Office of the Leader of the Opposition, and other suggestions for parliamentary reform are being implemented on the suggestion of the Asian Development Bank. The Speaker advised that the Parliament is looking to establish a system of standing committees, an area where Australian Parliaments have considerable experience.

In addition to our discussions with Vanuatu’s political leaders, and briefings by DFAT and AusAID representatives, the delegation saw Australia’s assistance to Vanuatu first-hand at a range of visits and inspections. Total Australian aid flows to Vanuatu in 2003-04 are $22.7 million, including $15 million in funding for the bilateral program and $3 million in Policy and Management Reform funds. The remainder includes funding for regional activities in areas such as HIV/AIDS and the environment. The Australian
aid program targets governance, law and justice, service delivery, education, health and, increasingly, rural development.

Law and order is an important focus of Australia’s current assistance, notably through the “Vanuatu Police Capacity Building Project”. The focus of this project is advisory assistance to the Police Commissioner, administrative improvements and capacity building at the Port Vila Police Station.

The delegation met Police Commissioner Robert Obed on the first day of our visit. He praised the “good partnership” with AusAID and the AFP through the Police Capacity Building Project, the support the AFP has provided to his office and the Australian-funded renovation of police headquarters in Port Vila, which the delegation inspected. Effectively tackling law and order concerns will be of great importance both domestically and in terms of investor confidence.

Some 24 percent of total Australian aid to Vanuatu in 2003-04 will be spent in the education sector, designed in part to address Vanuatu’s presently low rates for secondary school enrolment—fewer than 20 percent of students who leave primary school in Vanuatu continue to secondary school, with only four percent graduating from Year 13. The delegation saw first-hand the work of the education sector in Vanuatu, and Australia’s support for same, at the following inspections in Port Vila and in small communities on the main island of Efati: Ekonak Primary School; Ebule Rural Training Centre; and the Vanuatu Institute of Technology (VIT).

The delegation was struck by the obvious commitment of staff and students at these institutions and, in the case of VIT and the Ebule Training Centre, by their vital role in providing opportunities to young people who are unable to access the limited places in secondary schools. The delegation was also impressed by the bridges being built by the work of the Australian TAFE representatives we met at VIT.

A further 18 percent of Australia’s aid to Vanuatu in 2003-2004 will be spent in the health sector. Various health indicators for Vanuatu are still low compared with other Pacific countries. Vanuatu’s population per doctor, at 10 800, is three to five times greater than in Polynesia, while 20 percent of Vanuatu’s population still does not have access to health services.

Australia’s assistance focuses on addressing overall health planning and management, with increased emphasis on service delivery throughout Vanuatu. Health and related issues were discussed by the delegation during visits to the Vanuatu Women’s Centre; the Vanuatu Family Health Association; the Wan Smol Bag (“One Small Bag”) Theatre Group; and the Paunagisu Health Centre on Efati.

The delegation was greatly impressed by the work being done, with very modest resources, by all these groups. The Vanuatu Women’s Centre (VWC), which was formed to confront the problem of violence against women, has been funded by Australia since 1994. The VWC’s Director, Mrs Merilyn Tahi, advised us that the Centre is handling over 100 cases per month throughout Vanuatu. Mrs Tahi noted the violence caused in many families by poverty, alcohol abuse and the low status of women. Mrs Tahi thanked the delegation for Australia’s support over the years, stating that it has greatly assisted in raising the profile of violence against women as a serious issue in Vanuatu.

The delegation also met with staff of the Vanuatu Family Health Association (VFHA) in Port Vila. The VFHA advised us of its programs to encourage family planning awareness in schools. Australian funding (from Family Planning Australia) supports the VFHA’s work in three main areas: school programs, community awareness of reproductive health, and training for nurses.

The delegation visited the Wan Smol Bag Theatre Group in Efati, which endeavours to spread messages about HIV/AIDS, and other health and social issues, through theatrical performances and dramatised video presentations. In addition to discussions with the group, the delegation was privileged to view an excerpt of a musical performance on HIV/AIDS, giving us a good understanding of the way the group is able to present vital information to audiences who, for cultural reasons, might otherwise resist messages on such topics.

At the time of the delegation’s visit there were 12 Australian Youth Ambassadors for Development working in Vanuatu in a diverse range of organi-
This highly successful program has provided a vehicle for some 600 young professionals to undertake development work overseas. The delegation was pleased to meet three of these committed young Australians during our visit—Shannon Jones, who was working on film editing at the Wan Smol Bag Theatre Group and, at the VIT, Tashi Eyles working on arts and crafts training and Benjamin Grubb running IT courses.

The delegation gained the impression, during its discussions with Prime Minister Natapei and others, that the country’s leadership recognises the challenge Vanuatu faces in providing a sound economic future for its burgeoning young population, and is prepared to take measures to respond, seeking support from Australia and other countries where necessary. We were also impressed by the dedication of those Ni-Vanuatu we met working in civil society and in the health and education sectors.

The work of AusAID and Australian volunteers is playing a vital role in developing many social institutions in Vanuatu, and was greatly appreciated by the people we met in our travels. The delegation suggests to the Australian Government that the work being done by Australia’s aid program, and associated volunteers, in support of the prosperity of our region should be better promoted to the Australian public.

I thank my colleagues on the delegation, Deputy Leader Senator Linda Kirk and Mr Barry Haase MP, for their contribution to a successful and informative visit. On behalf of the delegation, I express our gratitude to the Australian Consul-General in New Caledonia, Mrs Denise Fisher, and her staff, and the Australian High Commissioner to Vanuatu, HE Mr Stephen Waters, and his staff, for their outstanding support. Our thanks also to the Parliamentary Relations Office, in particular Ms Julia Searle, and those officers of DFAT, AusAID and Austrade who briefed the delegation prior to our departure.

Finally, we are grateful to the people of New Caledonia and Vanuatu for their warm hospitality and for sharing their insights with us. In New Caledonia the delegation particularly wishes to thank the High Commissioner of the French Republic, HE Mr Daniel Constantin, and the Congress of New Caledonia and its President, Senator Simon Louéckhote, for hosting us and arranging a very beneficial program. The delegation similarly records its appreciation to the Parliament and Government of Vanuatu for their courtesy during an eventful week in Vanuatu politics.

We hope that the Congress of New Caledonia and the Parliament of Vanuatu will be able—once the results of recent elections in New Caledonia and pending elections here and in Vanuatu are resolved—to take up the Australian Parliament’s invitation to send return delegations, in order to further develop the relationships established during our visit.

Question agreed to.

COMMITTEES

Community Affairs Legislation Committee

Additional Information

Senator FERRIS (South Australia) (5.34 p.m.)—On behalf of the Chair of the Community Affairs Legislation Committee, Senator Knowles, I present additional information received by the committee on its inquiry into the Family and Community Services and Veterans’ Affairs Legislation Amendment (Income Streams) Bill 2004.

Rural and Regional Affairs and Transport Legislation Committee

Additional Information

Senator FERRIS (South Australia) (5.34 p.m.)—On behalf of Senator Heffernan, the Chair of the Rural and Regional Affairs and Transport Legislation Committee, I present additional information received by the committee on its inquiry into the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004.

BUDGET

Consideration by Legislation Committees

Additional Information

Senator FERRIS (South Australia) (5.35 p.m.)—On behalf of the Chair of the Rural and Regional Affairs and Transport Legisla-
tion Committee, Senator Heffernan, I present additional information received by the committee relating to hearings for the 2002-2003 additional estimates.

DOCUMENTS
Auditor-General’s Reports
Report No. 55 of 2003-04


Research and Development Corporations

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.35 p.m.)—by leave—I incorporate a tabling statement in Hansard relating to a government document tabled earlier today entitled Innovating Rural Australia.

The statement read as follows—

I am pleased to table the third in the series of annual reports on what the portfolio’s Research and Development Corporations (RDCs) have done in 2003.

Innovating Rural Australia—Research and Development Corporation Outcomes 2003 emphasises the broad array of public and industry benefits flowing from the RDCs’ $454 million investment in rural R&D.

It shows that the unique partnership between the Australian Government and rural industries continues to deliver significant benefits to primary producers, rural and regional Australia, and Australia as a whole.

The Australian Government has a long-standing commitment to research and development, especially to initiatives that improve the competitiveness and sustainability of our agricultural, fishing and forest industries.

Today, the core of Australia’s rural innovation—research and development—is a unique partnership between Government and industry. It has led to the establishment of 14 rural Research and Development Corporations, or RDCs, that service the R&D needs of the relevant industry sectors and the broader public.

The report—for the third year in succession—provides many examples of the direct economic benefits that flow from specific R&D programs. However, at the macro-economic level it highlights the relevance and value of rural R&D.

I refer to the recent drought where the rural sector’s response provides an insight into its improved productivity and flexibility, resulting largely from the knowledge and new practices successful R&D has provided.

The drought was widely considered to be a one-in-a-hundred-year event and the most severe in modern times, responsible for large falls in farm production, exports and incomes.

It particularly affected the cropping sector, with winter and summer crops producing around 40% of the previous year’s harvest. However, remarkably, the harvest was well above production during the less-severe drought in 1962-83.

The reason for this relatively better performance is improved planning and farm practices, such as the minimum tillage systems that have been widely used over recent years.

There have also been major genetic advances, such as breeding for improved water use efficiency and stress tolerance, which allow crops to make better use of available water over the growing season.

Water management is a major issue across rural and regional Australia, and one that has not escaped the attention of the RDCs.

The efforts, for example, of the Cotton RDC in improving crop water use have made cotton one of the country’s—and the world’s for that matter—most efficient irrigated crops. It shows how well the RDC model has served the public’s and industry’s interests.

Australian cotton growers produce up to 227 kg (one bale) of lint from every megalitre of water, compared with 138 kg/Ml for Californian cotton, 136 kg/Ml for Egyptian and 59 kg/Ml for Pakistani cotton.
In fact, the ability of the rural industries to respond to environmental problems is exemplary. In Queensland, for example, the quality of water emanating from sugar cane crops is under increasing scrutiny because Australia produces most of its sugarcane in catchments that drain into the Great Barrier Reef lagoon.

As coral ecosystems are sensitive to damage from excess nutrients and sediment, there is a need to ensure sugarcane industry practices do not jeopardise their integrity.

The industry has addressed this through the Sugar R&D Corporation, which has developed and put into practice a new cane farming system. The system involves soy bean fallow crops, minimal tillage, green cane harvesting and trash retention, and more precise delivery of fertilisers and pesticides.

Only 75 hectares of cane in the wet tropics was farmed under the new system in 1999-2000. However, this grew to 839 hectares in 2001-02 and, last summer (2003-04), I understand around 5,000 hectares was farmed using this new approach.

As well as delivering environmental benefits, the new cane farming system has proved more profitable for the growers.

As I mentioned earlier, the RDC model is a unique partnership between industry and Government that merges public and private interests to generate a wide range of social, economic and environmental benefits for the nation. The 2003 RDC Outcomes Report consolidates what our rural R&D effort has involved and achieved. It documents a range of economic, social and environmental benefits, and shows how well our unique R&D Corporation model serves Australia and our rural industries.

I commend the report to all Senators and Members.
### Recent case experience

However, several important Trade Practices Act cases have been considered since the Dawson Review provided its report to Government. The cases have raised questions about the operation of the Act.

The High Court has considered the application and interpretation of section 46 on two occasions, in Boral Besser Masonry Ltd v. ACCC [2003] HCA 5 (Boral) and in Rural Press Ltd v. ACCC [2003] HCA 75 (Rural Press).

The Full Federal Court has also considered section 46 on two occasions, in Universal Music Australia Pty Ltd v. ACCC [2003] FCAFC 193 and in ACCC v. Australian Safeway Stores Pty Ltd [2003] FCAFC 149 (Safeway).

### Trade Practices Act 1974

The object of the Trade Practices Act 1974 is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

The competition laws, including section 46, are in Part IV of the Act. Part IVA of the Act contains laws prohibiting unconscionable conduct, including unconscionable conduct in business transactions. Part IVB of the Act contains laws enabling the establishment of industry codes and includes, in section 51AD, a law that prohibits the contravention of any applicable industry code.

As outlined in the Government’s response to the recommendations of the Dawson Review, the Government considers that the competition provisions of the Trade Practices Act are designed to protect the competitive process rather than a specific market structure or individual competitors. The competition laws should also be distinguished from industry policy and should not be seen as a means of achieving social outcomes unrelated to the encouragement of competition, or of preserving businesses that are not able to withstand competitive forces.

The Government considers it is appropriate for the Act to address issues such as unconscionable conduct in business relationships, because the promotion of fair trading enhances the welfare of Australians.

The Government also recognises the importance of small business to the vigour of the Australian economy, and the contribution that small business makes to the growth in employment and innovation.

Against this background, there are a number of measures which the Government considers should be taken in the context of recommendations made in the Senate Committee’s report.

### MISUSE OF MARKET POWER

#### Misuse of market power

Section 46 of the Act prohibits corporations with a substantial degree of market power from taking advantage of that power for a prescribed purpose, that is, the purpose of eliminating or substantially damaging a competitor, preventing the entry of a person into a market, or deterring or preventing a person from engaging in competitive conduct.

#### Substantial market power

Only firms with a substantial degree of market power are prohibited from taking advantage of that power for a prescribed purpose. This is because firms that lack substantial market power are rarely, if ever, able to single-handedly harm competition in an enduring way. The prohibition therefore applies only to firms that meet the threshold requirement of possessing substantial market power.
The Act was amended in 1986 to lower the threshold from a requirement that a corporation be ‘in a position substantially to control a market’ to a requirement that a corporation have ‘a substantial degree of power in a market’. The type of power being referred to is ‘market power’, that is, the ability to behave persistently in a manner different from the behaviour that a competitive market would enforce on a firm. Alternatively, market power may be described as the ability of a firm to raise prices above the supply cost without rivals taking away customers in due time, supply cost being the minimum costs an efficient firm would incur in producing the product or supplying the service.

The change to the lower threshold was motivated by a concern that the previous threshold caught conduct only by a monopolist or monopsonist, and that a lower threshold was necessary to capture corporations with a sufficient degree of market power to seriously harm competition. As the Second Reading Speech noted, the threshold was thus intended to capture not only monopolists, but also major participants in oligopolistic markets and, in some cases, leading firms in less concentrated markets.

In light of the Boral case, some submissions to the Senate Committee claimed that the majority judgements of the High Court implied that an absolute freedom from competitive constraint was required before a corporation met the ‘substantial degree of power in a market’ threshold. This was said to have effectively restored the threshold to capture only monopolists or near monopolists and that this was contrary to Parliament’s intention in making the 1986 amendments to lower the threshold.

**Recommendation 1:** The Committee recommends that the Act be amended to state that the threshold of “a substantial degree of power in a market” is lower than the former threshold of substantial control; and to include a declaratory provision outlining matters to be considered by the courts for the purposes of determining whether a company has a substantial degree of power in a market. Those matters should be based upon the suggestions outlined by the ACCC in paragraph 2.16 of this report.

The suggestions outlined in paragraph 2.16 are that:

1. The threshold of a “substantial degree of power in a market” is lower than the former threshold of substantial control.
2. The substantial market power threshold does not require a corporation to have absolute freedom from constraint—it is sufficient if the corporation is not constrained to a significant extent by competitors or suppliers.
3. More than one corporation can have a substantial degree of power in a market.
4. Evidence of a corporation’s behaviour in the market is relevant to a determination of substantial market power.

**Government response** The Government does not accept this recommendation. The Government does not agree that the majority judgements in Boral imply that a corporation must have absolute freedom from competitive constraint before it will be found to have substantial market power. Nor does it agree that the threshold has been returned to one of ‘substantial control’. Market power is a relative concept. As the majority judgements in Boral note, matters of degree are involved. The majority judgement in the later
The case of Safeway makes this especially clear. In that case, Safeway was found to have substantial market power, even with around 16 per cent market share. Safeway was clearly not a corporation in ‘substantial control’ of the market, yet it was found to have misused its market power. The Government is also not satisfied that the proposed amendments would clarify the operation of section 46. The Government notes that the first proposal would have no legal effect and merely recites legislative history. Far from clarifying the section, the second proposal—stating in part that ‘it is sufficient if the corporation is not constrained to a significant extent’—would be likely to generate further complexity and uncertainty by adding another layer of interpretation to section 46. The third proposal is redundant because both the courts (see, for example, the majority judgement in Safeway) and the explanatory material accompanying the 1986 amendments make it clear that more than one firm may have substantial market power in a given market. The fourth proposal is also unnecessary because firm behaviour is already taken into account in assessing substantial market power. For example, in Boral, the High Court considered whether the firm’s behaviour operated as a strategic barrier to entry, thus bolstering its market power.

**Taking advantage**

Section 46 prohibits corporations with a substantial degree of market power from ‘taking advantage’ of that power for a proscribed purpose. Some submissions were made to the Senate Committee expressing concerns about the application of the ‘take advantage’ element of section 46. In particular, these submissions claimed the High Court’s interpretation of ‘take advantage’ in Rural Press had narrowed the application of section 46.

Recommendation 2: The Committee recommends that the Act be amended to include a declaratory provision outlining the elements of “take advantage” for the purposes of section 46. This provision should be based upon the suggestions outlined in paragraph 2.28 of this report.

Paragraph 2.28 outlines a proposal to amend section 46 to clarify that, in determining whether a corporation has taken advantage of its market power, the courts should consider whether:

1. The conduct of the corporation is materially facilitated by its substantial degree of market power;
2. The corporation engages in the conduct in reliance upon its substantial degree of market power;
3. The corporation would be likely to engage in the conduct if it lacked a substantial degree of market power; or
4. The conduct of the corporation is otherwise related to its substantial degree of market power.

**Government response**

The Government does not accept this recommendation. It is not accepted that the interpretation of ‘take advantage’ requires any statutory clarification. While consideration of substantial market power involves a sophisticated economic analysis, the ‘take advantage’ requirement in section 46 simply establishes the requisite causal relationship between market power, conduct and a proscribed purpose.
As the High Court noted so concisely in Queensland Wire Industries Pty Ltd v. Broken Hill Proprietary Co Ltd (1989) 167 CLR 177, ‘take advantage’ merely means ‘use’ and there is no requirement to assess intent. In Melway Publishing Pty Ltd v. Robert Hicks Pty Ltd (2001) 205 CLR 1, the High Court said that a corporation takes advantage of its market power if it does something that is materially facilitated by the power, even if that behaviour is not absolutely impossible without the power. The High Court also underscored the need to accurately characterise the causal relationship by assessing whether a corporation could ordinarily engage in that conduct in the absence of market power. In Rural Press, the leading judgement of the majority applied ‘take advantage’ by considering whether the corporation with substantial market power could engage in the same conduct in the absence of that power and by considering whether the conduct was materially facilitated by that power. This is consistent with previous cases and, therefore, there is nothing about the High Court’s application of ‘take advantage’ in Rural Press that suggests a narrowing of section 46. The Government therefore agrees with Government Senators that there is no significant ambiguity in the meaning or application of ‘take advantage’ and that the current interpretation does not hinder the operation of section 46.

**Predatory pricing**

The Boral case was the first opportunity for the High Court to consider the issue of predatory pricing under section 46. In light of the High Court’s decision, some submissions were made to the Senate Committee expressing concern about the ability of section 46 to address predatory pricing.

Recommendation 3: The Committee recommends that the Act be amended to provide that, without limiting the generality of section 46, in determining whether a corporation has breached section 46, the courts may have regard to: the capacity of the corporation to sell a good or service below its variable cost.

The Committee recommends that the Act be amended to state that: where the form of proscribed behaviour alleged under section 46(1) is predatory pricing, it is not necessary to demonstrate a capacity to subsequently recoup the losses experienced as a result of that predatory pricing strategy.

Government response

The Government accepts this recommendation in part. To provide further guidance to courts in the consideration of predatory pricing cases, the Government agrees that section 46 should be amended to ensure that the courts may consider below cost pricing when determining whether a corporation has misused its market power. Costs are to be measured in a manner determined by the courts in each case and below cost pricing is not to be legally essential to a finding that a corporation has breached section 46. However, the Government does not favour an amendment that examines a corporation’s capacity to price below cost in isolation. Assessing a firm’s capacity to engage in conduct is not the same as examining whether the conduct was engaged in or not. The Government also does not favour an amendment that refers to variable cost because it is not
always the most appropriate cost measure and because it can be difficult to routinely quantify, potentially making compliance more expensive for corporations that wish to ensure they are not engaging in predatory pricing.

The Government also considers that section 46 should be amended so that a court may consider whether a corporation has a reasonable prospect or expectation of recoupment as a relevant factor when assessing whether a corporation has misused its market power. Although a reasonable prospect of recoupment is not to be legally essential to a finding that a corporation has breached section 46, it often provides a good test of whether price-cutting is predatory, as Government Senators noted. It is therefore appropriate that the section clearly state that a reasonable prospect of recoupment is a factor that may be taken into account.

Financial power

Some submissions were made to the Senate Committee expressing concerns about statements in Rural Press that distinguished between a corporation’s market power and material and organisational assets, which the Senate Committee describe as ‘financial power’.

Recommendation 4: The Committee recommends that section 46 of the Act be amended to state that, in determining whether or not a corporation has a substantial degree of power in a market for the purpose of section 46(1), the court may have regard to whether the corporation has substantial financial power.

‘Financial power’ should be defined in terms of access to financial, technical and business resources.

Government response

The Government does not accept this recommendation. As Government Senators noted, if this recommendation were to be adopted, it would considerably extend the scope of section 46 to a degree that is both uncertain and undesirable. This is because ‘financial power’ (that is, access to financial, technical and business resources) is simply not the same as market power.

Leveraging market power

Section 46 does not explicitly state whether the market in which substantial market power is misused must be the same as the market in which that market power is established. Some submissions to the Senate Committee raised concerns about the lack of comment by the High Court on this point in Rural Press. This is significant because, in that case, the Full Federal Court implied that section 46 requires the establishment of substantial market power, and its misuse, to occur in the same market.

Recommendation 5: The Committee recommends that section 46 be amended to state that a corporation which has a substantial degree of power in a market shall not take advantage of that power, in that or any other market, for any proscribed purpose in relation to that or any other market.

Government response

The Government accepts this recommendation. The Government agrees that section 46 should be amended as recommended. It is entirely appropriate for section 46 to proscribe the leveraging of substantial market power from one market into another.
| **Co-ordinated market power** | Corporations may obtain market power in their own right or as a consequence of their interactions with other corporations in the market. Subsection 46(2) of the Act recognises, for example, that the market power of a corporation should not be assessed in isolation of any related subsidiaries or holding companies in the same corporate group. Some submissions to the Senate Committee questioned the court’s ability to take account of interactions between a corporation and other firms in a market, where those firms are not related to the corporation, that is, where they are not in the same corporate group. |
| **Recommendation 6:** The Committee recommends that section 46 be amended to clarify that a company may be considered to have obtained a substantial degree of market power by virtue of its ability to act in concert (whether as a result of a formal agreement or understanding, or otherwise) with another company. |
| **Government response** | The Government accepts this recommendation in part. The Government agrees that section 46 should be amended so that, in assessing whether a corporation has ‘a substantial degree of power in a market’, a court may take account of any market power the corporation has that results from contracts arrangements or understandings with others. This amendment amounts to a statutory restatement of the principle set out by Justice Lockhart in Dowling v. Dalgety Australia Limited and Others (1992) 34 FCR 109. |
| **UNCONSCIONABLE CONDUCT IN BUSINESS TRANSACTIONS** | Part IVA of the Act prohibits corporations from engaging in unconscionable conduct in their transactions with both consumers (section 51AB) and business consumers (section 51AC). While the Senate Committee identified several issues in its consideration of unconscionable conduct, it concluded that section 51AC is a relatively new section that has not yet had time to develop a significant body of jurisprudence. Submissions that proposed amendment, therefore, stemmed from the premise that the current section is ineffective at protecting small business. The Senate Committee accepted that this premise has not yet been proven. The Senate Committee did, however, accept that the case had been made for some minor changes to section 51AC. |
| **$3 million threshold** | The protection offered to business consumers by section 51AC is subject to two limitations. Firstly, listed public companies are not protected by section 51AC. Secondly, the section does not apply where the supply or acquisition of goods is at a price greater than $3 million, as noted in subsections 51AC(9) and 51AC(10). |
| **Recommendation 7:** The Committee recommends that subsections 51AC(9) and 51AC(10) of the Act be repealed. |
| **Government response** | The Government does not accept this recommendation. At the time of enactment, in 1998, the Government intended to limit the protection afforded by section 51AC to small businesses. This was achieved by limiting access to the protection to prices not exceeding $3 million (originally $1 million) for the supply or acquisition of goods. Removal of the cap would broaden the focus of the provision in a way unintended by the Government. |
The Government does, however, accept that the $3 million cap is too low for some small businesses and therefore agrees with the recommendation of Government Senators that the cap for section 51AC should be raised to $10 million.

Unilateral variation of contracts

To identify if a corporation has engaged in unconscionable conduct in business transactions, the court can have regard to a non-exhaustive list of factors. Subsections 51AC(3) and 51AC(4) provide similar lists that are tailored for business consumers that either supply or acquire the goods or services in question.

The non-exhaustive list includes factors such as the relative strengths of the bargaining positions of each party, whether any undue influence or pressure was applied and the extent to which there was an opportunity to negotiate the terms and conditions of acquisition or supply.

Some submissions argued before the Senate Committee that the use of a unilateral variation term was unconscionable. Some companies in their contracts maintain the right to vary some aspect of the arrangement without consulting the other party to the contract. The Senate Committee accepted that there may be circumstances where a corporation’s maintenance of the right to vary the terms of the contract unilaterally is efficient and in the interests of competition. They expressed reservations, therefore, about prohibiting unilateral contract terms and identified a middle ground.

Recommendation 8: The Committee recommends that subsections 51AC(3) and 51AC(4) of the Act be amended to include ‘whether the supplier (in subsection 51AC(3)) or acquirer (in subsection 51AC(4)) imposed or utilised contract terms allowing the unilateral variation of any contract between the supplier and business consumer, or the small business supplier and acquirer.’

Government response

The Government accepts this recommendation. It accepts that the imposition or utilisation of a unilateral right of variation may be an indication that unconscionable conduct has occurred in the bargaining process. The Government also supports the conclusion that unilateral variation clauses do not always indicate that unconscionable conduct has occurred. In some cases these clauses may be indicative of healthy competition.

The Government therefore agrees that subsections 51AC(3) and 51AC(4) of the Act should be amended so that courts may have regard to the imposition or utilisation of contract terms that allow for the unilateral variation of any contract between the supplier and business consumer, or the small business supplier and an acquirer of goods or services, in determining if unconscionable conduct has occurred.

Application of Part IVA to governments

Recommendation 9: The Committee recommends that subsection 2B(1) of the Act be amended so that it is clear that Part IVA of the Act applies to the Commonwealth Government; and that the Government consult with the States and Territories with a view to amending subsection 2B(1) of the Act, so that Part IVA of the Act applies to State, Territory and local governments.
Government response

The Government accepts this recommendation in circumstances where governments are carrying on a business. This recommendation has three parts. First, that subsection 2B(1) be amended to make it clear that the Commonwealth Government is bound by Part IVA of the Act; second, that the Commonwealth Government enter into consultations with the States and Territories to amend subsection 2B(1) to ensure that States and Territories are bound by Part IVA; and third, to amend the Act to ensure that local governments are bound by Part IVA.

The Government accepts that it should be clear the Commonwealth is bound by Part IVA (the first part of recommendation 9), but notes that alteration of the Act is unnecessary. Section 2A states that the Commonwealth is bound by all provisions of the Act in circumstances where it is carrying on a business. This includes Part IVA. Amendment of the Act would, therefore, appear unnecessary.

The Government accepts the principle expressed in the second part of this recommendation. Binding States and Territories to Part IVA of the Act creates certainty for business in their dealings with that level of government. This will be progressed through negotiations between the Commonwealth and the States and Territories.

The Government accepts the principle expressed in the third part of this recommendation. Binding local governments to Part IVA of the Act creates certainty for business in their dealings with local government. The Commonwealth Government proposes to amend section 2D to remove the current exemption that local government bodies have from Part IV of the Act. The Government will give further consideration to ensuring local governments are also subject to Part IVA of the Act.

OTHER ISSUES FOR SMALL BUSINESS

Retail tenancy agreements

Some submissions to the Senate Committee argued that where a retail tenant is required, as a term of their lease, to keep their lease conditions secret, the landlord has engaged in unconscionable conduct. The Senate Committee accepted that there may be circumstances where it is in the interests of both parties to keep the details of the lease secret, but noted that these were likely to be the exception rather than the rule. The Senate Committee noted that a tenant should be free to discuss the terms of their tenancy if they wished to do so.

Recommendation 10: The Committee recommends that the Commonwealth Government negotiate with State and Territory governments, with a view to introducing measures which would prohibit retail lease provisions compelling tenants to keep their tenancy terms and conditions secret.

Government response

The Government does not accept this recommendation. It is a fundamental principle of the law of contract that parties are free to negotiate the terms of the contract, including a lease. Prohibiting secrecy clauses would violate this principle of contract law. Furthermore, if retail tenancy arrangements need regulating, it is a matter for State and Territory governments, rather than the Commonwealth Government.

Collective bargaining for small business

The Government has accepted a Dawson Review recommendation that the Act be amended to introduce a notification process for small business seeking to collectively bargain. The notification process will provide a speedier and simpler process to enable small businesses to obtain
immunity under the Act for otherwise unlawful collective bargaining. It is intended that the collective bargaining be with large businesses, where the likely benefit to the public will outweigh any likely detriment from the arrangement. The notification process will be limited to small businesses by requiring the value of the transactions that each individual business is engaged in to $3 million or less (variable by regulation). Some submissions to the Senate Committee proposed that the collective bargaining legislation allow the boycotting of the business being bargained with and not impose a $3 million threshold.

Recommendation 11: The Committee recommends that the Government immediately bring forward legislation to introduce a collective bargaining notification scheme, including the right to boycott, and excluding the proposed $3 million threshold for notifications.

Government response The Government accepts this recommendation in part. Legislation will shortly be introduced to the Parliament to implement a small business collective bargaining notification process. That notification process will have a threshold of $3 million for each individual business and will allow, in the appropriate circumstance, for an ability to boycott.

Creeping acquisitions The term ‘creeping acquisitions’ is generally used to describe the acquisition of a number of individual assets or businesses over time that may have a cumulative effect upon the acquiring firm’s market share. Some submissions to the Senate Committee raised concerns that the prohibition on anti-competitive mergers in section 50 of the Act may not be capable of addressing the cumulative effect of such a strategy on competition in the relevant market. This is said to be case because each individual acquisition would not substantially lessen competition in the relevant market, even though, if the acquisitions had all been made by the same firm at the one time, they may have done so.

Recommendation 12: The Committee considers that provisions should be introduced into the Act to ensure that the ACCC has powers to prevent creeping acquisitions which substantially lessen competition in a market.

Government response The Government does not accept this recommendation. The Dawson Review considered the issue of ‘creeping acquisitions’ in detail and concluded that the Act, in its present form, is adequate to consider ‘creeping acquisitions’ in so far as they raise questions of competition. The Dawson Review noted that concentrated markets may be highly competitive and that the purpose of competition law is to promote competition rather than to protect a particular market structure or particular competitors or classes of competitor.

Further, there is considerable uncertainty as to whether ‘creeping acquisitions’ in general (as opposed to a specific acquisition) do substantially lessen competition and cause economic detriment.

ENFORCEMENT OF THE TRADE PRACTICES ACT

Divestiture Divestiture involves the forced sale of some or all of the assets of a corporation. Section 81 of the Act allows a court to order divestiture of unlawfully acquired shares or other assets in the context of a merger or other acquisition that contravenes section 50 (that is, if the merger or other acquisition substantially lessens competition in a relevant market).
Some submissions to the inquiry proposed that divestiture be available as a remedy in other contexts, particularly misuse of market power cases.

**Recommendation 13:** The Committee recommends that subsection 81(1) of the Act be amended so that section 81 can be applied where a corporation is found to have contravened section 46, section 46A, or any new section introduced to regulate creeping acquisitions.

**Government response**

The Government does not accept this recommendation. As the Dawson Review noted, applying divestiture to misuse of market power cases is inappropriate for conceptual and practical reasons. Conceptually, divestiture may be an appropriate remedy in the context of a merger or other acquisition because it directly addresses the conduct (the acquisition of shares or other assets) that gives rise to a breach of the Act. In contrast, divestiture is not an appropriate remedy in misuse of market power cases because there is no clear nexus between the unlawful conduct and the assets of the corporation. In misuse of market power cases, the conduct that gives rise to a breach of the Act is the taking advantage of market power for a proscribed purpose, not the possession of shares or other assets. Therefore, attempting to identify assets to be divested so as to remedy a misuse of market power would be inappropriate.

In addition, in practical terms, courts in those jurisdictions that allow divestiture in misuse of market power type cases have noted the difficulties in ‘unscrambling’ a corporation without greatly harming the efficiency of a viable market participant.

In light of the Government’s response to recommendation 12, it is not necessary to comment on the application of a divestiture power to ‘creeping acquisitions’.

**Cease and desist orders**

Some submissions to the Senate Committee proposed that the ACCC be provided with the power to issue cease and desist orders, modelled on similar powers provided to the Commerce Commission in New Zealand. It is said that these orders would compel a corporation to cease and desist from engaging in anti-competitive conduct.

**Recommendation 14:** The Committee recommends that the Act be amended to provide for cease and desist orders, modelled on the orders provided for in sections 74A to 74D of the Commerce Act 1986 (NZ), appropriately modified to conform with Australian constitutional law.

**Government response**

The Government does not accept this recommendation. The Dawson Review examined the need for a power to make cease and desist orders, and found that there was no justification for its introduction. Specifically, it was not clear to the Dawson Review why the existing process of obtaining an interim injunction was inadequate. Further, the Dawson Review noted that even if a constitutionally valid power were able to be granted to the ACCC to issue cease and desist orders, it was not clear that such orders would be any speedier or more efficient than an interim injunction.

**Investigative powers**

Section 155 empowers the ACCC to compel parties to provide documents and other evidence relevant to investigations into possible contraventions of the Act. The Federal Court has ruled that these powers are to cease once legal proceedings have commenced. The ACCC contended to
the Senate Committee that its investigations of alleged anti-competitive conduct are hindered following its application to the court for an interim injunction to stop the conduct. Specifically, there is said to be a trade-off between being able to obtain an injunction quickly to prevent further anti-competitive conduct and the inability of the ACCC to compel responses from some witnesses after injunctive proceedings commence, with the potential weakening of the ACCC’s case due to the unavailability or destruction of evidence. The ACCC proposed that it be given the ability to use its section 155 powers after the grant of an interim injunction, but prior to the commencement of substantive proceedings.

Recommendation 15: The Committee recommends that section 155 of the Act should be amended to enable the ACCC to seek the permission of the court (whether as part of a warrant application or otherwise) for the continued use of its powers under section 155 after the commencement of injunctive proceedings. The use of section 155 powers should cease prior to the commencement of substantive proceedings.

Government response

The Government does not accept this recommendation. The court has very extensive powers to compel the exchange of information in preparation for trial. It is not accepted that these powers are inadequate. The Government notes that the Dawson Review came to the same conclusion when it considered a similar proposal. The power of courts to compel the exchange of information in Trade Practices Act cases was strengthened significantly in Trade Practices Commission v. Abbco Ice Works Pty Ltd (1994) 123 ALR 503. As a result of this case, corporations were denied the right to claim the privilege against self-exposure to a penalty during pre-trial court processes. Therefore, corporations are already able to be forced to answer questions or hand over documentary evidence to the ACCC, even if it will result in the corporation being found in breach of the Act and liable to very substantial financial penalties and other orders.

ACCC budget

Recommendation 16: The Committee recommends that the ACCC should be adequately funded to undertake its role as the principal litigant in section 46 and section 51AC cases.

Government response

The Government accepts the recommendation but does not accept the suggestion that the ACCC is inadequately funded. In the 2004-05 Budget, the Government has provided the ACCC with an additional $46.7 million over four years and a $22.0 million equity injection in 2004-05, to enable the ACCC to effectively deal with an increased number of matters and to maintain its level of service delivery.

Federal Magistrates Court jurisdiction

The Federal Magistrates Court currently has jurisdiction to hear consumer protection and product safety and product information cases under the Act. Submissions to the Senate Committee noted that the jurisdiction of the Federal Magistrates Court could be extended, noting that this forum may provide for speedier and cheaper resolution of disputes.

Recommendation 17: The Committee recommends that the jurisdiction of the Federal Magistrates Court be extended to enable it to deal with Misuse of Market Power (sections 46 and 46A, where cases rely upon section 83), Contravention of Industry Codes (section 51AD) and Unconscionable Conduct (Part IVA).
The Government agrees that legislation should be amended to enable the Federal Magistrates Court to consider proceedings relating to Part IV A and Part IVB. However, the Government considers that section 46 and section 46A cases are likely to raise issues that are complex and that are more appropriately considered by the Federal Court.

INDIGENOUS AFFAIRS: LANDS ACQUISITION REGULATIONS

Return to Order

Senator ABETZ (Tasmania—Special Minister of State) (5.36 p.m.)—by leave—I make this statement on behalf of Senator Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs, in response to a Senate order to produce documents. The order arises from a motion moved by Senator Ridgeway and agreed to by the Senate on 21 June 2004. It relates to a request for documents relating to the making of an amendment to regulations under the Lands Acquisition Act 1989. The minister has identified a number of documents which are relevant to the Senate order. However, in accordance with past practices of successive governments, the government is not prepared to disclose the content of advice which is subject to legal professional privilege.

Two documents sought under this return to order are the subject of legal professional privilege. These are a request for legal advice and the legal advice actually provided. Senator Vanstone is aware of her responsibilities, which include the need to consider whether the disclosure of information would be contrary to the public interest. In this case, she does not believe it would be in the public interest to table in the Senate documents which disclose legal opinion. The other documents identified by the minister are being provided. Material irrelevant to the information sought in the Senate order has been deleted from one of the documents—‘ATSIC interim controls’—being supplied in response to the order.

Senator RIDGEWAY (New South Wales) (5.38 p.m.)—by leave—I want to speak briefly about this issue given that it was generated by a motion earlier this week, particularly in response to the government not being forthcoming in providing information that was requested, and more particularly in relation to the evidence of legal advice. Given that the minister—I have met with her officers and they have been unable to explain the legality of such a broad sweeping amendment; they cannot even confirm that it is indeed legal for the Commonwealth to effectively place a caveat style interest on properties—has refused to provide any information as to apparent legal advice, this leads me to suspect that there may well be no comprehensive legal advice at all. Certainly the minister has never been able to answer my questions in that regard. The minister’s office have no idea how the amendment would work and impact on the properties concerned. They have been chasing up questions on this matter and still have not managed to provide confirmation of the mechanics of the decision to look at the introduction of the Lands Acquisition Amendment Regulations.

In addition, the documents that the government have produced reiterate, to my mind, the government’s intentions with regard to Indigenous owned and Indigenous controlled properties. You only have to look at the letter of 15 April from the government’s Office of Aboriginal and Torres Strait Islander Affairs which states that it is important in the meantime that ATSIC’s assets be protected for future Australian government use. The explanatory statement says exactly the same thing. When I questioned the minis-
ter and her officers on this, the minister assured me that this did not actually reflect the government’s intention in that the properties will be transferred only to Indigenous Business Australia or the Indigenous Land Corporation. But when you look at the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004, it reveals that this will remain at the minister’s discretion.

This goes to the heart of why the government need to provide the advice about whether they have the legal capacity to do what they propose to do, or indeed whether it should be supported. When you look at the explanatory statement that was issued with the exemption in 1990—some 14 years ago—it stated that ATSIC would be free to conduct its own property transactions without reference to the act. It seems to me that the government have forgotten that ATSIC property was never for their use. It is Indigenous owned property, to be managed by, sold by or granted to Indigenous people’s organisations. It is for Indigenous people’s use, not the government’s.

The documents that have been provided are insufficient. They do not answer the questions. They do not clarify the legal position of the affected properties. I would have thought it was in the government’s interest to explain exactly how the properties are affected, and they have not done that. They have not bothered to even try to explain that in any way, nor have they indicated that they themselves even know. It seems to me that the broad-sweeping statement in the regulations may also have unintended consequences beyond the list of 19 properties that the government are proclaiming.

So I put it on the record that I think the government’s proposal is much more than just moving on after a decision to abolish ATSIC. We know, for example, that the amendment bill to achieve that has been referred to a Senate select committee for inquiry and proper examination. We do not know what is going to occur after that. We know that the government is also attempting abolition by the back door—by starving the board of their staff, their operating funds and now, of course, their assets. It is all tied together in terms of the government’s motives and about how it views ATSIC. The process is a grab not only for power but also for assets. So when the Senate deals with this particular issue, we have to keep in mind that when the legislation was put in place in 1990 it was done for very good reasons about Indigenous people and their organisations being able to make decisions, to do that in their interest and to do that without interference or ministerial discretion being required. This decision moves this back into the pen of government control—the Minister for Finance and Administration has to be asked whether or not any of these properties may be disposed of.

I have been told as well that there are rumours or the possibility that assets may be sold to fund legal cases. My response is that we have had 14 years of ATSIC boards that have had that responsibility and there is no evidence anywhere to suggest that that would be the case. If there is that fear, perhaps the minister ought to sit down with the ATSIC Board of Commissioners and work out some agreement or memorandum of understanding, because quite frankly there is no discussion occurring. The minister ought to be concerned that there is no dialogue occurring. She may think that ATSIC is gone, but as far as the parliament is concerned, or at least the Senate, ATSIC still exists. There is a Senate select committee process, and it will give people an opportunity to have their say, including on vital issues like property assets.
IRAQ: TREATMENT OF PRISONERS

Return to Order

Senator ABETZ (Tasmania—Special Minister of State) (5.44 p.m.)—by leave—I wish to make a short statement on behalf of the Minister for Defence, Senator the Hon. Robert Hill, in relation to an order of the Senate which arose from a motion moved by Senator Brown and agreed by the Senate on 22 June 2004 that there be laid on the table by the Minister of Defence, no later than 4.00 p.m. today, the 61-page report and nine additional annexures from the Defence fact-finding team. The Minister of Defence has given the Senate’s request careful consideration. The documents referred to in the order form part of a brief to the Minister of Defence. Consistent with the policies of this government and of all previous governments, it is not the practice to table such departmental advices in parliament.

Senator BROWN (Tasmania) (5.45 p.m.)—by leave—I wish to make a brief statement in response to the minister’s statement. The request was for the 61-page brief to the Minister for Defence summarising contact made by Defence Force personnel in Iraq, including those who have visited Abu Ghraib prison and those who have dealt with the reports from Amnesty International and/or the Red Cross or other human rights organisations to the government and ipso facto to the minister. Had the minister responded by saying that there were some matters of confidence here which were to be kept secret in the national interest, one could understand this rejection of the request from the Senate. However, he has not done that. The minister did indicate, I think in reply to questions from Senator Faulkner during the estimates committee hearings, that he would consider the release of this document. The minister has given no other reason here than it is the form of the government not to give ministerial briefs to the Senate. However, this document is at the heart of matters which the Senate has been investigating through the committee system for many a long hour, and just the other day the minister gave this Senate a five-page statement sum-marising what is in the 61-page document. What has become obvious is that the five-page summary did not give the evidence to the Senate that it needs if it is going to make a proper assessment of the information that the government had about abuses of prisoners in Iraq and/or its response.

I do not believe that the Senate should accept the response from the minister. I believe that the minister should bring that briefing document out. If there is any reason of national security involved, of course we are amenable to the minister blacking out the sections that would be involved. But what really is at the heart of this is a cover-up by the government. It does not want the Senate to see this document. It does not want it to see the list of communications that came from Defence Force personnel to departments and on to the minister. That is being hidden here. That is not acceptable, in the view of the Senate, for an order for the production of a document which includes a summary and a listing of communiques to the minister and to departments. That document should be forthcoming. The excuse from the minister is wholly unacceptable. To simply say, ‘I’m not going to show the Senate and I’m not going to make these pivotal documents available because they’re part of a brief to me,’ is specious and unacceptable. It is a snub to the Senate.

The Senate ought to take further action. I will consider what further action can be taken, but all that can be said tonight on the matter is that this is insulting to the Senate. The minister is derelict in his duty to produce the information, which is not going to be against the national interest. This is also a
snub to the public of Australia, because it is in the public interest that this document be produced.

AUSTRALIAN ENERGY MARKET BILL 2004

TRADE PRACTICES AMENDMENT (AUSTRALIAN ENERGY MARKET) BILL 2004

HIGHER EDUCATION LEGISLATION AMENDMENT BILL (No. 2) 2004

FAMILY AND COMMUNITY SERVICES AND VETERANS’ AFFAIRS LEGISLATION AMENDMENT (SUGAR REFORM) BILL 2004

First Reading

Bills received from the House of Representatives.

Senator ABETZ (Tasmania—Special Minister of State) (5.50 p.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have two of the bills listed separately on the Notice Paper. I move:

That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading

Senator ABETZ (Tasmania—Special Minister of State) (5.51 p.m.)—I move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in Hansard.

Leave granted.

The speeches read as follows—

AUSTRALIAN ENERGY MARKET BILL 2004

I am delighted today to be introducing landmark legislation for the energy sector in Australia. Energy plays a vital role in the Australian economy, and contributes significantly to our international competitiveness. Industry depends upon secure, reliable and competitively priced energy to underpin its investment decisions. Australia’s electricity and gas prices are among the lowest in the developed world. It is important to Australia’s competitive position in this area that we pursue the required energy market reforms.

The arrangements in this legislation pave the way for the establishment of a truly efficient, competitive, Australian energy market. These measures put into action the Energy White Paper, released by the Prime Minister yesterday.

The bills I am tabling today represent the practical implementation of the findings and recommendations of the Independent Review of Energy Market Directions (the Parer Review), commissioned by the Council of Australian Governments (COAG).

The Ministerial Council on Energy, which I chair, has had responsibility for overseeing the Parer Review. The Review identified the strategic issues for the Australian energy market and the key policies required from the Commonwealth, State and Territory Governments.

The 11 December 2003 MCE report to COAG was the culmination of twelve months of work. The recommendations contained in the report constitute a substantial response to the Parer Review and agreement to these policy initiatives has been formalised through a new intergovernmental agreement—The Australian Energy Market Agreement.

The bills before the house are part of a new national legislative framework which has been developed on a collaborative basis, with all States and Territories. Over the next few months, complementary legislation is to be introduced into all Australian Parliaments.

The package of legislation I am introducing today provides for new institutional and governance arrangements for the Australian energy sector. It will improve the quality, timeliness and national character of the energy markets.

This legislation will apply first in relation to the national electricity market. A revised template electricity law is to be passed by South Australia.
All other governments, with the exception of Western Australia and the Northern Territory, will pass application acts applying this law in their own jurisdiction.

The Australian Energy Market Bill 2004 is the Commonwealth’s application of the South Australian template electricity laws. The Australian Government will be applying the electricity laws, including the Electricity Code, in a similar way to its current application of the Gas Code as a Commonwealth law. This arrangement will enable the energy market rules to apply consistently across all participating government jurisdictions.

This bill is also forward looking in that it provides a mechanism to enable other energy laws to be applied consistently across Australia. This would be done only with the consent of all governments, as provided for in the Australian Energy Market Agreement.

South Australia will also pass a law establishing the Australian Energy Market Commission. The core functions of this body will be to continue to develop the market rules, carry out reviews of the market and undertake other functions as conferred on it under energy laws. These functions in the first instance will relate to the template electricity laws as set out in the National Electricity Law and Code.

A highlight of the cooperative legislative framework is the new arrangements which are to apply to the regulation of Australia’s energy market.

The Parer Review found that the current multiplicity of regulators creates a barrier to competitive interstate trade and adds costs to the energy sector. There are currently 13 regulators operating across every layer of commercial activity. The Australian Government has worked with State and Territory governments to achieve a reform package that will see a significant reduction in the regulatory burden facing market participants and investors in the energy sector.

To streamline and improve the quality of economic regulation, lower the cost and complexity of regulation facing investors and enhance regulatory certainty, all governments have agreed to establish a single, national energy regulator—the Australian Energy Regulator (AER). The Trade Practices Amendment (Australian Energy Market) Bill 2004 seeks to implement this agreement.

Initially the AER will have responsibility for the economic regulation of wholesale electricity and transmission networks and key rule enforcement functions. It will undertake the regulatory and enforcement functions previously exercised by the Australian Competition and Consumer Commission (ACCC) and the National Electricity Code Administrator.

The AER will be exercising powers as a result of the application of the National Electricity Law and National Electricity Code as a law of the Commonwealth through the Australian Energy Market Bill 2004. The AER will also have functions conferred upon it by the States and Territories where they are also applying the National Electricity Law and Code.

The responsibilities of the AER are to be extended to include gas transmission by 30 June 2005. Further, all governments have agreed that the AER will be responsible for the regulation of distribution and retailing (other than retail pricing) by 2006, following development of an agreed national framework.

The AER will be a separate legal entity but will operate as a constituent part of the ACCC for matters such as staffing and financial arrangements. These proposed amendments to the Trade Practices Act 1974 establish the AER as a body corporate constituting three members—a Commonwealth member, who is also an ACCC Member, and two State/Territory AER members. The AER is to be assisted in the performance of its functions by staff and consultants made available to the AER by the Chair of the ACCC.

The Parer Review also found that the process for making changes to the National Electricity Code is complex, both in its conception and the way in which the system has worked in practice.

Accordingly, the Trade Practices Amendment Bill incorporates amendments that will facilitate the streamlining of the code change process and any subsequent process relating to industry access code approval or authorisation under the Trade Practices Act 1974.

In particular, the amendments enable the ACCC to make use of consultations undertaken by the
Australian Energy Market Commission during the amended code change process, avoiding unnecessary duplication.

I commend this bill.

TRADE PRACTICES AMENDMENT (AUSTRALIAN ENERGY MARKET) BILL 2004

This bill is the second part of the package that I have outlined in the previous second reading speech.

I commend this bill.

HIGHER EDUCATION LEGISLATION AMENDMENT BILL (No. 2) 2004

I am pleased to be able to announce to honourable members the first major commitment of new funding to be provided by the Budget following the passage last year of the legislation underpinning the Government’s higher education reform package Our Universities: Backing Australia’s Future.

The Our Universities: Backing Australia’s Future package will deliver to universities $2.6 billion over the next five years, including funding for more than 34,000 new university places. It is a substantial and vital commitment to public funding of higher education.

This bill now before us will not only build on this commitment to public funding, but will also clarify the transition to the new framework of legislative arrangements, and further enhance the central importance of students within the higher education experience.

Firstly, the bill amends appropriation amounts in the new Higher Education Support Act 2003 to provide for the Government’s 2004-05 Budget measures for higher education.

One of the important Budget measures in this bill is a commitment of $4.9 million over four years to the Australian Maritime College. This funding will be used to develop a new campus at Point Nepean, Victoria including providing 40 places each year. The campus will offer courses in marine and coastal conservation.

This bill also provides funding of $18 million over three years to the University of Western Sydney to support capital costs for a new medical school. This will enhance and improve the teaching hospital capacity and delivery of health and medical services in western and south-western Sydney.

This bill also provides for an additional 12 medical school places at James Cook University in Queensland, and an additional 400 undergraduate nursing places nationwide.

Through this bill the Government will also provide $12.4 million over four years for continued transitional assistance for regional tertiary institutions whose funding for research purposes would otherwise be reduced as the result of the application of performance-based formulae for allocating research funds. The measure is part of the Australian Government’s ongoing commitment to science and innovation through the Backing Australia’s Ability package.

The bill also provides for a number of legislative keeping measures. It amends HESA to increase the maximum funding amounts for the Commonwealth Grant Scheme, Other Grants and Commonwealth Scholarships to reflect supplementation for price movements and other technical adjustments for the years 2005-2008. It updates the funding amounts in the Higher Education Funding Act 1988 to update appropriations for 2004 to reflect revised over enrolment estimates.

The bill also makes technical amendments to HESA which will enhance the implementation of the higher education reforms in for the remainder of this year and into 2005.

These changes include enabling guidelines to be made concerning the grievance handling procedures for non-Table A providers of academic as well as non-academic matters; enabling guidelines to be made concerning the conditions which may be applied to student contribution amounts and tuition fees for student cohorts; and clearly defining the meaning of courses of study in relation to combined and double degrees.

The bill ensures that Open Learning Australia is subject to all the necessary provisions in HESA so that FEE-HELP can be appropriately administered for OLA students, and that OLA is required...
to comply with the relevant Quality and Accountability requirements.

The Bill amends the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 to clarify the definition of ‘institution’ to specifically exclude the National Institute of Dramatic Art (NIDA) from the grandfathering provisions. The Government’s commitment to NIDA students will be achieved through other means.

The Bill also amends the Australian National University Act 1991, to enable the ANU to comply with the National Governance Protocols.

Full details of the measures in the bill are contained in the explanatory memorandum circulated to honourable members.

I commend the bill to the Senate.

FAMILY AND COMMUNITY SERVICES AND VETERANS’ AFFAIRS LEGISLATION AMENDMENT (SUGAR REFORM) BILL 2004

The Australian Government recognises that the sugar industry continues to face serious difficulties as a result of a number of factors, including low world prices, a corrupt world market and increasing competition from major producers such as Brazil. The Australian Government also understands that the sugar industry is vital to many rural and regional communities in coastal Queensland and northern New South Wales.

On 29 April 2004, the Prime Minister announced that the Australian Government will provide up to $444.4 million over four years for a comprehensive range of measures to help the sugar industry to reform and to assist individual cane farmers and their families who are in need.

A key issue raised by many in the sugar industry during consultations was the need to ensure that sugarcane farms can more readily be handed from one generation to the next. Accordingly, the Australian Government is introducing legislation that will facilitate intergenerational transfer in the sugarcane industry. The scheme will provide sugarcane growers who satisfy certain criteria with a window of opportunity to gift their farm without attracting the ‘gifting’ rules that apply to social security and Veterans’ Affairs payments. This measure will support sugarcane growers dealing with challenge and change while, at the same time, increasing the involvement of young people in setting the future directions of the sugar industry.

Key features of the scheme include:

- the net value of the farm enterprise cannot exceed $500,000;
- sugarcane growers (or their partners) must be age pension age (or will reach that age during the 3 year window);
- the income from all sources for the three years prior to the transfer can be up to the maximum rate of age pension that would have been payable in the same period;
- the transfer must be made by way of gift and must divest the sugarcane grower of all interests in sugarcane farming (excluding the family home);
- sugarcane farms gifted during the ‘window’ will be excluded from the normal gifting provisions. Transfers made prior to the start of the scheme will not be eligible;
- standard assets test provisions will apply to all other assets;
- standard income test provisions will apply;
- the next generation must have had an active involvement in the farm for the three years prior to the transfer;
- the retiring farmers must have owned the property for at least 15 years or been actively involved in farming for 20 years. They must have been in sugarcane for at least the last two years.

The scheme commences from Royal Assent.

Other important elements of the Sugar Industry Reform Program 2004 include a $146 million Sustainability Grant to the industry and up to $75 million in funding for Regional and Community Projects. The Sugar Industry Reform Program 2004 also includes:

- income support for up to 12 months for those growers and harvesters and their families most in need;
• business planning assistance for growers, harvesters, and cooperative and smaller mills;
• generous re-establishment grants and retraining assistance for those wishing to leave the industry;
• restructuring grants for growers to undertake on-farm improvements; and
• crisis counselling for those involved in the sugar industry.

Furthermore, in recognition that the sugar industry must take the lead in its own reform, the Australian Government will establish an Industry Oversight Group and local Regional Advisory Groups to develop and implement comprehensive plans for change.

Ordered that further consideration of these bills be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

Ordered that the Higher Education Legislation Amendment Bill (No. 2) 2004 and the Family and Community Services and Veterans’ Affairs Legislation Amendment (Sugar Reform) Bill 2004 be listed on the Notice Paper as separate orders of the day.

**ANTI-TERRORISM BILL 2004**

**Consideration of House of Representatives Message**

Message received from the House of Representatives returning the Anti-terrorism Bill 2004 and informing the Senate that the House has agreed to amendments (1) to (8) and disagreed to amendments (9) and (10) made by the Senate, and requesting the reconsideration of the bill in respect of the amendments to which the House has disagreed.

Ordered that consideration of the message in Committee of the Whole be made an order of the day for a later hour.

**FAMILY AND COMMUNITY SERVICES AND VETERANS’ AFFAIRS LEGISLATION AMENDMENT (INCOME STREAMS) BILL 2004**

**Second Reading**

Debate resumed.

(Quorum formed)

**Senator GREIG (Western Australia)**

Earlier today before the debate on the Family and Community Services and Veterans’ Affairs Legislation Amendment (Income Streams) Bill 2004 was interrupted I was speaking about the Intergenerational Report, which tells us that over the next 40 years the proportion of the population over the age of 65 will double to 25 per cent and the growth in the work force—those aged 15 to 64—is expected to slow to almost zero. In view of the reduced income from work force taxation contributions we must question the appropriateness of encouraging people to rearrange their assets so as to draw on taxpayer funded income support.

The beneficial rules of the assets test exemption under the present act were aimed at providing an incentive for people to use lump sums to purchase an income stream that could be expected to last over their re-
tirement rather than for them to rely on the age pension. It seems incongruous, therefore, that the incentive at the same time provides the means for people to gain access to income support payments when they have the means to support themselves.

We Democrats acknowledge that the removal of the 100 per cent assets test exemption will be disadvantageous to some people who have not yet purchased the products but who intended to do so in the future. We do not, however, support the view of Labor senators in the Community Affairs Legislation Committee report of 21 June this year that it would lead to a loss or reduction in the level of the age pension of many low- and middle-income Australians. That is simply not true.

Where a person has a significant financial asset that allows them to purchase an income stream we believe they have an obligation to the Australian taxpayer to optimise the income from that asset. This does not mean making inappropriate offshore or risky investments. However, the Democrats believe that it is inappropriate that a major financial asset of more than $1 million can be invested by a pensioner couple in return for a low-income product so that they can avail themselves of income from the public purse. We note that the Investment and Financial Services Association told the committee that the new products brought about by the legislation will enable retirees to:

... invest in a balanced portfolio of investments and that will improve both the amount and the quality of their returns over their retirement.

This legislation does not apply to low- or middle-income Australians. Its application means that currently a person with several hundreds of thousands of dollars will have only half of that asset taken into account. Under the current assets test a single non-home owner with assets of up to $306,250 can still receive a part pension and full concessions. The legislation will effectively double that amount for income stream products—that is, a person with more than $600,000 to spend on an income stream product will still be eligible for a part pension under the assets test. We do not agree with Labor that a single person with $600,000 to support themselves is a low-income person.

We recognise that this is a tightening of the social security means test. Normally, this would ring alarm bells for the Democrats because of the government’s propensity to hit on disadvantaged Australians. Their attempts during this parliament to remove any Australians with a disability from disability support pensions and oblige them to compete in the open employment market reflects just how mean spirited they can be. However, this legislation is targeted at ensuring that persons who need income support in retirement receive it and that those who are more able to provide for their retirement do so, while at the same time being able to access concessional taxation treatment.

A consequence of the assets test exemption has been the growing number of other mechanisms being used by people—with the assistance of their financial advisers—to circumvent the intention of the current legislation. These types of products dramatically dilute the effectiveness of the income and assets testing regime set out under the legislation. The effect of that is that the Department of Family and Community Services is forced to change the rules to cover the loopholes, and that is what we are seeing in the bill before us today. Fortunately, those people who have purchased their retirement products, totally in good faith and within the intention of the legislation, will not be subjected to an upheaval in their retirement plans, and we are pleased that the govern-
ment has chosen to avoid that outcome by not making this legislation retrospective.

I was intrigued recently by the response of a financial adviser in the discussion of this bill. It seems there has been minimal protestation from either the financial advisory sector or indeed from retired persons. The response I received from a financial adviser was, alarmingly, along the lines of, ‘Well, it was a fairly good wicket for a while, and the industry is not surprised that sooner or later the loophole was going to be tightened. This attitude of ‘grab it while you can’ is not responsible fiscal management of taxpayer funds. We Democrats support the changes brought about by this bill because they will make the retirement income system fairer by reducing the scope for wealthy people to access the age pension through the assets test exemption. The reduction in the assets test exemption from 100 per cent to 50 per cent helps ensure the age pension is paid to those in need. A 50 per cent exemption retains a significant incentive for individuals to purchase income streams.

The bill also extends the asset test exempt status for new market linked income streams for non-commutable products. The concept of a complying income stream being extended to include a new market linked income stream product is a favourable measure. Non-commutable complying market linked income streams offer retirees access to investment products which may provide better returns in the long term than a current asset test exempt income stream, such as complying pensions or annuities. However, market linked products are more volatile and involve more risk in the short term, and the level of annual income from year to year cannot be guaranteed. Unlike current complying income streams they will not provide a guaranteed income for the term of the contract, but the income will be based on the account balance, which is subject to the underlying investments.

These market linked income streams are similar to existing allocated pensions or annuities in that they both are account based products and people can exercise control over investment options. Being non-commutable, a person cannot withdraw the capital before the term of the product. Market linked income streams are similar to existing allocated income streams in that they are both account based products, and the customer can have more control over investment options. The main differences are that a market linked income stream will require that specified annual payments be made during a financial year, while an allocated income stream allows annual income to be within a lower and upper limit. The specified payments are calculated to ensure that the account balance is exhausted over a term equal to the individual’s life expectancy at the time of purchase.

Market linked pensions are based on a portfolio of investments selected by the purchaser, including growth investments such as shares in the stock market, but they would also have a fixed term based on the life expectancy of the purchaser. This is in contrast to current complying income streams, which are generally invested in low-yielding interest based securities because of the guaranteed nature of those products. At a risk, therefore, they have the potential for greater income earning.

Restrictions on commutation for a market linked income stream would be consistent with the current requirements for existing assets test exempt income streams. This bill provides that the 50 per cent assets test exemption will apply from age pension or service pension age, which is consistent with the approach taken for the existing life expectancy product.
The Australian Democrats note that these changes will provide retirees with more choice, by making available to them a wider range of income stream products, and they will benefit from having greater choice in selecting an income stream that best meets their retirement needs. However, only people with eligible termination payments—that is, superannuation savings—will be able to purchase market linked income streams. So, as the industry advertisements say, ‘If you don’t have super savings, you won’t be able to play.’

At the same time as this government responsibly encourages people to contribute to their own retirement in the form of superannuation, and then to invest it in products such as market linked income streams, it also fails to recognise that for many people superannuation contributions will be an impossibility—people who cannot contribute to superannuation because they cannot work for reasons of disability or providing care. When you cannot work because your physical or mental impairment prevents you from doing so or because you must provide care to a child, a parent or a loved one, then changes such as to the bill before us will be meaningless.

The government’s recent budget did nothing for people with a disability. It did not link their income support to the cost of their disability, it did not recognise the real costs of disability. It paid carers a one-off sweetener of $600 or, in a few cases, $1,000, but it did nothing to alleviate their caring obligations or provide them with ongoing support to offset their inability to work. The government in its second reading speech in the House made specific reference to the fact that couples will still be able to invest up to $900,000 in a complying income stream and still receive some age pension. This is of no solace to a couple where one person has a disability and the other is unable to work because they have to care for their partner. Their $600—or perhaps $1,000—payment will never be able to be invested in any market linked scheme and certainly compares poorly with $900,000.

We Democrats acknowledge that the system proposed in the bill before us today is only a partial overhaul of the income and assets testing regime applying to retirement income stream products. As I have said, we recognise that the way in which the current system is being manipulated by asset wealthy Australians is a situation that should not be allowed to continue, particularly because of the targeted nature of the social security system, which we have always called for.

The Democrats believe the proposed system represents a significant improvement in the way in which retirement income streams are treated under the social security means tests. The proposed changes are designed to prepare Australia for the growing costs associated with an ever ageing population, including the cost to taxpayers of providing a government funded age pension for retirees. The changes are in keeping with earlier changes to superannuation, which enabled people who were not previously able to contribute to superannuation to do so. Once again, the Democrats indicate positive affirmation of the government’s intentions and aims in this area and support the bill.

Senator BUCKLAND (South Australia) (6.07 p.m.)—The Family and Community Services and Veterans’ Affairs Legislation Amendment (Income Streams) Bill 2004 follows the government’s announcement earlier this year that they were seeking a more flexible and adaptable retirement income system. We question that. The principal measures of the bill amend the social security and veterans affairs’ means test assess-
...ment of income streams to provide a 50 per
cent—

Senator Patterson—I’ll give you a mul-
tiple choice question on it after, Senator
Buckland!

Senator BUCKLAND—Thank you, Min-
ister, I look forward to that! It provides a 50
dercent assets test exemption for market
linked income streams from 20 September
2004 and changes the available assets test
exemption from 100 per cent to 50 per cent
for certain non-commutable income stream
products purchased from 20 September
2004. For older Australians planning their
retirement, the area of retirement incomes
can be somewhat bewildering. There are
myriad different products which retirees can
roll their superannuation into. But there are
dangers attached to that.

Senator Patterson—Don’t rush this!

Senator BUCKLAND—if the minister
could just be quiet, we might be able to get
where we are going!

The ACTING DEPUTY PRESIDENT
(Senator Brandis)—Order, Senator Buck-
land! Please address your remarks through
the chair. Order, Minister!

Senator BUCKLAND—You might just
speak to the minister as well.

The ACTING DEPUTY PRESIDENT—
Senator Buckland, proceed.

Senator Patterson—Slowly!

Senator BUCKLAND—it will be par-
...
Senator Patterson—That would not be hard.

Senator SHERRY (Tasmania) (6.13 p.m.)—I do not think that was called for, Minister. We are trying to get through a pretty tough program.

Senator Patterson—You wouldn’t think so.

Senator SHERRY—If we could keep the personal reflections to a minimum, I think it would help.

Senator Patterson interjecting—

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Order, Minister! Senator Sherry has the call.

Senator SHERRY—I do want to make some comments about the Family and Community Services and Veterans’ Affairs Legislation Amendment (Income Streams) Bill 2004 because it does have some very significant impacts that I do not think many in this place or indeed in the community are aware of. The changes are also quite directly related to some superannuation issues. The Community Affairs Legislation Committee conducted an inquiry into this piece of legislation.

Firstly, I want to thank the Department of Family and Community Services. When they came to give evidence before the committee, they produced a written diagram. That was the first time I had actually seen a diagram presented in that form to members of the committee. It is reproduced at page 3 of the committee report, under table 1.1: ‘Proposed income stream changes’. It presents the income stream of post-retirement products that are available for purchase from your superannuation when you reach retirement. The department kindly went further and illustrated in colour—which, unfortunately, is not reproduced in this report—the areas of the different types of retirement income stream products that would be affected by this legislation.

The first point I want to make is that we are dealing here with the income streams purchased from your superannuation lump sum when you reach retirement. The diagram indicates in the first section that you take your superannuation as a lump sum—many people do not convert to an income stream—the second section shows income stream products, and underneath that is a detailed chart of non-commutable income streams and then subcomponents of that and commutable income streams.

This legislation allows the establishment of an additional income stream product known as growth pensions. I do not oppose growth pensions in principle. I think that when selling growth pensions it is important to give a realistic picture of their advantages and disadvantages. The advantage of a growth pension is that it gives a market rate of return. On average, over your retirement life that is an advantage. The growth pension can be invested in higher risk type assets which, over time, will give you the average higher rate of return. However, the very advantage can and may be a disadvantage. The downside is that there is a variable rate of return. When a person enters the growth pension income stream—they purchase this income stream—it is very important that they are informed that the income stream they are receiving in that first year—let us say it is $10,000—could fall and fall by a substantial amount of money, depending on the market rate of return. It could fall two or three years later, and people should be made aware that that could happen. So whilst the average rate of return is higher, it is subject to variable ups and downs—and I think that is very important.

Linked with this has been a tightening of the assets test of the age pension. On behalf
of the Labor Party I want to express some concern about this aspect of the legislation. You do not have to introduce a so-called growth pension; you do not have to tighten the assets test. The introduction of the growth pension could stand on its own, and the cost of the growth pension to budget is not significant. I think it is a few million dollars a year—tops. But the government has deliberately linked the introduction of a growth pension with a tightening of the assets test of the age pension, and this has significant implications for significant numbers of people. The department gave us some detailed evidence on the impact of the tightening of the assets test of the age pension.

It does not have to be linked, but the government have chosen to link it. The reason the government have tightened up the assets test on the age pension—and I do not think a lot of people understand what is going to happen here—is to save money. This goes back to the speech by the Treasurer, Mr Costello, in February. This was the grand plan—I think it was somewhat oversold—to create a so-called ‘flexible’ and ‘more responsive retirement income’. I think it was correctly dubbed the ‘work till you drop’ speech, the ‘work till you drop’ policy set. That has certainly been the correct tenor of the reporting. In the ‘work till you drop’ speech that Mr Costello gave—

Senator Patterson interjecting—

Senator SHERRY—I have seen an incredible number of people refer to it as ‘work till you drop’, including your former leader, Dr Hewson, who was reporting on a conversation at a dinner party when they were talking about everything from ‘work till you drop’ to other matters. The concept, correctly, that Mr Costello was advocating was that there should be no such thing as full-time retirement.

Senator Patterson—Rubbish! Absolute rubbish!

The ACTING DEPUTY PRESIDENT—Minister, I have been very tolerant. No more interjections.

Senator SHERRY—In the ‘work till you drop’ concept that Mr Costello was outlining, he said, ‘There’s going to be no such thing as full-time retirement’. That is a direct quote from the Treasurer, Mr Costello. When he presented this package—which was a very mean and miserable package in terms of the overall costing—it was touted in the media as the grand plan. There were some new initiatives and some changes to the current retirement income system. But the net cost of these changes for this grand plan of ‘work till you drop’ came to approximately $5 million or $6 million over the four years—that is the net cost. The reason for the tightening of the assets test was to enable the government to offset the cost of the ‘work till you drop’ package in other areas.

Page 161 of Budget Paper No. 2 shows that the tightening of the assets test means a reduction in the age pension paid by the Department of Family and Community Services of some $25.7 million, $53.9 million and $87 million over the three years of the forward estimates and a reduction in the payment of the veterans pension of $2.3 million, $5.6 million and $9.9 million over the three years of the forward estimates. These are very significant reductions in the payment of the age pension and the veterans pension as a result of the tightening of the assets test. They are not small numbers. Even more important than that is the actual growth of the savings year on year. In the first year there is a total saving of $28 million from reductions in payment of the age pension and the veterans pension. In the next year almost $60 million is saved and in the next year almost $97 million is saved. There is very significant
growth in savings and very significant cuts to the payment of pensions in this country. I am a little surprised that more people have not been paying more attention to these cuts in payments of the age pension.

At the committee hearing, obviously with a costing of cuts of this nature, the Labor Party and my colleague Senator McLucas, who is a permanent member of the committee, were interested to know exactly who is going to be affected by this cut in payments to the age pension and the veterans pension. For the first year, 2005-06, there will be approximately 19,000 to 20,000 people, and that will include 3,000 people who are going to switch from current income stream products to the growth pension. And the number of people affected is going to grow at approximately the same rate every year—for the first year 19,000 to 20,000, for the second year a further 18,000 to 19,000 approximately, and for the following year the same. So by the end of the third year of this measure you will have approximately 55,000 people coming onto the age pension and the veterans pension having a reduction in their pension. These are pretty significant numbers.

The other number that is very important is the impact of the growth of superannuation. My view is that the numbers I have outlined tonight will grow over time more significantly than I have indicated because of the growth in superannuation savings in this country, driven by compulsory superannuation. There are two groups of people who have superannuation. The first are those who had superannuation pre 1997, when it became compulsory—about four in 10 of the population, many of whom have retired or are coming up to retirement. The second group are those who did not have super until it was made compulsory—60 per cent of the work force, overwhelmingly lower and middle income earners.

The important thing to understand is that the tightening of the assets test is going to affect more and more people also because of the growth of superannuation savings. The assets test for a single person starts to cut in I think at approximately $150,000 in assets. That sounds like a lot of assets—$150,000, excluding the family home—but let us have a look at the average balance in a superannuation fund. I think the average is $55,000 to $60,000 at the moment. You are assets tested. Let us say you had modest levels of personal assets—a car, a small amount of shares or whatever—and they are worth approximately $50,000 and then you had a superannuation asset of $100,000. That $100,000 does not sound like a lot of money in super savings, but it is relatively modest in the context of the income stream $100,000 in super produces. The point I want to make is there will be significant numbers of people with $100,000 or more in super because of compulsory superannuation. The numbers will grow significantly. There will be more and more people affected by the proposed tightening of the assets test over time.

We did hear from the department—and they were doing the job I know they are required to do and putting up the government’s spin—that more and more people should be self-reliant and that we should be reducing the number of people to whom a part pension or a full pension is available. That is spin and it sounds like rhetoric. But the reality of this approach will be, because of what I have outlined, more and more low- and middle-income earners, with modest incomes in their working lives and modest levels of superannuation savings, being affected by this measure. I am concerned about this approach. Labor’s view is that superannuation and the compulsory nine per cent for low- and middle-income earners is an add-on to the age pension and should be seen in that context. The outcome we are going to have here is:
on average higher income from your private growth pension—and by the way you have to pay the fees and commissions, but that is another story—but lower income from your age pension. So you get the extra income from the private pension, the growth pension, but you get a lower age pension because of the tightening of the assets test. I want to put on the record my concerns about this approach.

The minister may not be aware that the department took a question on notice. We asked for the specific numbers that I have referred to here—they were approximate numbers that I gave, and I accept that the department could only give approximate numbers at the committee hearing. I did ask whether the numbers the department gave included figures for the Department of Veterans’ Affairs. The department—and I am not criticising them—were not able to clarify that issue at the committee hearing. I ask them to clarify that issue when the minister sums up the second reading debate or, alternatively, in the committee stage so we have on the record whether those figures include the Department of Veterans’ Affairs pensions and, if they do not, what numbers are impacted over time as a consequence of this measure. I did want to draw this issue to the attention of the Senate. It is very important.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

COMMITTEES

Membership

The Acting Deputy President (Senator Cherry)—The President has received letters from a party leader seeking variations to the membership of certain committees.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (7.30 p.m.)—by leave—I move:

That senators be appointed to committees as follows:

Administration of Indigenous Affairs—Select Committee—
Appointed—Senators Crossin, McLucas and O’Brien

Legal and Constitutional Legislation Committee—
Appointed—Participating member: Senator Hogg.

Question agreed to.

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (No. 1) 2004-2005

APPROPRIATION BILL (No. 1) 2004-2005

APPROPRIATION BILL (No. 2) 2004-2005

APPROPRIATION BILL (No. 5) 2003-2004

APPROPRIATION BILL (No. 6) 2003-2004

Second Reading

Debate resumed from 22 June, on motion by Senator Ian Campbell:

Senator MARK BISHOP (Western Australia) (7.31 p.m.)—I rise to speak on the Appropriation Bill (No. 1) 2004-2005, the Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005, the Appropriation Bill (No. 2) 2004-2005, the Appropriation Bill (No. 5) 2003-2004, the Appropriation Bill (No. 6) 2003-2004 and the Appropriation Bill (No. 5) 2003-2004, and I wish to address the appropriations for the Department of Veterans’ Affairs. Most people are staggered when they are told that the annual budget for veterans is now $10.6 billion per annum. This is a portfolio that is right at the bottom of the government’s pecking order. Even though this is a gross cost and does not include the cost of pensions and health care, which would be paid anyway, $10.6 billion per annum in anyone’s language is a lot of
money. It is three times the budget for the Department of Foreign Affairs and Trade, more than half the entire budget for Defence and half the budget for the education portfolio. To some extent it can be said that this is the downstream cost of war. This is simply because governments, when they send people overseas in the national interest, as they define it at the time, make a commitment: they promise that, in the event of harm, veterans and their families will be looked after. We all honour and respect that commitment. We also honour and respect those who serve in our forces whether or not they go overseas. But there is a difference: when lives are put on the line in the full knowledge that they might be lost there is a national obligation. It is different from peacetime service although, at the same time, the duty of care is not diminished. We respect all those who work in the national interest, and the same should apply to nurses and schoolteachers. By and large it can be said that the services and benefits available to veterans in particular are appropriate. Of course, not all veterans will agree with that, because they can always be improved.

Eligibility for benefits is quite a complex issue. Some feel aggrieved at not being eligible, and in some cases the law can be classified as being quite arbitrary. In general, though, the rules are very generous, as was always intended. The benefit of the doubt implicit in veterans law is very wide. The broad nature of this intent is reflected in the fact that the Veterans’ Affairs budget is basically open-ended. In modern management terms this is a problem because some constraints are always needed, hence we get conflicts between the breadth and generosity of the law and the need to manage funds in a budget which, at the end of the day, is finite. In fact, I suspect that some time recently something has been said high in government budget management circles about the recent growth in outlays in the budget for veterans. For the first time in recent years complaints are now being made about restrictions and service refusals, and I will return to that point shortly.

Looking at the budget for veterans, we see that 57 per cent is spent on service pensions, widows pensions and disability compensation; 41 per cent is spent on health care; 0.03 per cent is spent on war graves and commemorations; and the rest is spent on administrative overheads. The latter might seem small, but it is not. The amount for war graves and commemorations, which includes a lot of the minister’s personal public relations efforts, is $32 million per annum. The cost to run the Department of Veterans’ Affairs is a mere $55 million. For veterans who do not have access to these figures, the following might be of interest: disability pensions cost $1.3 billion; service pensions, $2.8 billion; war widows pensions, $1.5 billion; and medical examinations, just for compensation claims, $16 million. I will turn now to the health area: medical practitioners are paid $715 million per annum; hospital care costs $1.7 billion; ancillary health care costs $500 million; pharmaceuticals cost $530 million; and residential nursing home care costs $770-odd million. So veterans and taxpayers can appreciate the level of commitment made to care for veterans and their families.

As I mentioned, all of these budget items are bottomless—that is, whatever the veteran is entitled to, they receive. The exception to this, as we have seen in recent times, is the home care program, which is somewhat alone in the Department of Veterans’ Affairs in being a capped program. It has a direct relationship to the number of health care card holders. As we have seen, as demand grows the cake has to be sliced into thinner pieces. That is why services are being cut even though the need increases. It also flies in the
face of the savings this program makes to the cost of aged care by keeping people in their own homes.

It is unfortunate that the financial bean counters do not pay this credit. The reason for having ‘special appropriations’, as they are known, is well understood. Each year projections are made on expenditure, but of course setting limits is not possible. This is especially the case with pensions. However, when it comes to health expenditure, for example, some controls are obviously necessary. It is interesting in fact to look at the controls in place in DVA over health care, because they do fluctuate. Just a few years ago there was a process in place whereby prior approval was required for a range of health treatments. Those recommending the treatment had to justify the need to the department. As part of the staff-cutting fetish which promoted some careers in a government keen to axe as many public servants as possible, prior approval was removed. The statistics for usage and cost went over the moon immediately and—surprise, surprise—controls of a different kind went back on. Expenditure levels on some allied health services, such as physiotherapy and chiropractic, have been dragged back but others, like dietetics, have almost disappeared. The dilemma, of course, is to know how high the bar should be set. No doubt overservicing and unjustified demand are real issues, but so is getting the health care which is needed and which is an entitlement. Indeed, the current growing controversy in the veteran community about cutbacks to services has to be seen in this light.

The other downside to open-ended budgets is their abuse by those keen to shift costs. Two years ago, when I first came to this portfolio, I became aware of a practice within DVA whereby staff levels were being reduced with savings to the salary budget but contractors were being hired to replace them from the program budget. So we had a cute process of cutting public servants, because that kept the Prime Minister happy, but with no effect on the budget. All that happened was a cost transfer. The answers given to me on a number of occasions were that this was an accepted practice by the Department of Finance and Administration. Given the then philosophy of that department at the time, that is probably no great surprise.

The Howard government has made much of the growth in the veterans’ budget since it has been in power. We are happy to give some credit, as we do for the benefits given to poorer war widows that we have just seen flow from the Clarke report. Those initiatives, however, are small and in fact the great bulk of the growth in the veterans’ budget comes from increased usage and indexation of outlays. Let me quote some examples. In 1996 the amount spent on disability pensions was $843 million. Next year it will be $1.3 billion. That alone accounts for half a billion dollars of growth. No government largesse was involved at all. It was all the result of increased numbers of claims, higher acceptance rates and indexation.

Let us look at health care. In 1996 the total cost of veterans’ health care was $1.7 billion, including DVA running costs. Next year the figure will be $4.4 billion, including running costs. That is an increase of $2.7 billion over eight years. That is growth of 61 per cent over that period of time. Apart from a small number of extra gold cards, this is not due to government largesse either. As DVA are quick to remind us, it is put down simply to an ageing population and increasing health care cost delivery. The commemoration budget of $32 million is partly government largesse, but mostly for its own promotional purposes. Looking over all the DVA budgets over the years, this is the common pattern. It is interesting to note, however, that for the first time next year the dynamics of a fading
World War II generation will begin to show. Service pension outlays, for example, are much the same next year and will probably begin to go into a gentle decline. Equally, the number of health card holders is starting to decline. It will only be the effect of indexation and increasing health care costs which will maintain the budget at its current level. Conversely, the small outlays on funeral benefits almost double.

Having made those general observations on the veterans’ budget, let me turn to some other issues within the Veterans’ Affairs portfolio. I have already mentioned a perception that a new financial discipline is afoot within DVA, especially in the health area. Complaints are increasing on a range of fronts. The cuts to home care I have already mentioned. Aids and appliances also seem to be a target, and the memory of the attempt late last year to cut the entitlement to artificial limbs is fresh in our minds. I recently intervened to help a desperate family obtain a self-tilting chair for a frail veteran in the electorate of Capricornia which met fierce resistance and obstruction. Although the battle was won, tragically the chair was not delivered until after the veteran had passed away. Tales such as this are now becoming frequent. Changes to transport are also causing a lot of aggravation. Once, as we know, veterans were transported for their health care in big, white Commonwealth limos in many cases. Then, naturally, that ceased and taxis were provided at no cost. Now taxis are provided, but the veteran must make the booking and pay cash for the fare. Forms have to be filled and reimbursement takes time. Naturally, veterans see this as a degradation of their services. The big white cars, as we all accept, were over the top. But at present there is a lot of angst, particularly in New South Wales. Last year it was Queensland, and I well recall the case of a veteran in the country area of western Queensland who had a very long journey to make to Brisbane for his treatment, with no car and no family to help him. This veteran was refused any consideration and had to withdraw large sums from his savings account until DVA got the message. The point here is that no-one decries the need to eliminate waste and get efficiencies in the expenditure of taxpayers’ money. However, where veterans and widows are really inconvenienced and where some are at risk, a degree of flexibility is required.

A more frequent and more serious complaint concerns what is seen as the devaluation of the gold card. In the last 12 months the gold card crisis forced the government—very tardily, I must say—to pay GPs a higher fee. That seemed to fix the problem and we are told there are now more GPs accepting the gold card than there were before the crisis. That is good. However, it now seems that the other incentives provided for GPs to bulk-bill are worth more to the GP than the gold card schedule of fees. Veterans are now being asked for both their gold card and their Medicare card. GPs then cash in each card respectively according to the higher fee available to them. That is understandable, but what does it mean for the credibility of the gold card? Is it any wonder then why GPs and veterans are asking whether this is a sign that the government is simply intending to merge veterans with all other concession card holders? It certainly seems this way, so veterans ask: what is the status of the gold card any longer? What is the value of government promises?

The parallel issue here is the fate of veterans’ access to medical specialists. To dig itself out of its hole, the government in the last budget promised to increase specialists fees by 15 per cent for consultations and 20 per cent for procedures. It was hoped this would appease specialists who have abandoned the gold card in their hundreds. For many veter-
ans and war widows this has indeed been catastrophic. Finding orthopaedic surgeons and ophthalmic surgeons willing to take the gold card is getting very difficult for veterans. Whether the specialists think the new deal is acceptable is anyone’s guess. Feedback I have received from the AMA suggests it may be for some but not for others. In any case, most specialists’ books are full.

The final matter I wish to raise in this debate concerns an administrative practice in the Department of Veterans’ Affairs. As we know, all bureaucracies have their skeletons and the DVA is no exception. In fact, the DVA has a number of skeletons, but the one I wish to address tonight concerns the military compensation scheme in Brisbane—although it must be said at the outset that this problem could be wider. Last year the Senate Finance and Public Administration Legislation Committee conducted an inquiry into the administrative review within the veterans and military compensation jurisdictions. A consistent submission made to the committee concerned the practice of the MCRS of referring compensation claims out to a small panel of solicitors to seek advice for reconsiderations. On the face of it, this would not be unusual where specialised legal advice was needed on difficult points of law. It seems, though, that this was not the purpose. The allegation was that DVA claims assessors were referring reconsiderations out to law firms to actually write the decisions. This is a task that most claims assessors ought to be trained to do. In evidence to the committee, the DVA denied this practice per se but did admit that seeking legal advice was a regular practice.

The point being made in submissions to the committee was not just the spending of almost $5 million of taxpayers’ money but about fairness. To those who appeared before the committee, the equation for claimants seeking compensation for service related disabilities was totally lopsided—and they were right. Few ex-servicepeople can afford to pay solicitors and, as a general rule, legal aid is not available. As a result, this all-party committee recommended that the Auditor-General conduct an audit of the practice. It also recommended that the ANAO assist the MCRS draw up guidelines for the procurement of legal advice. Nothing has happened about this, although I have been of a mind to seek Senate approval to ask the Auditor-General to oblige.

However, it seems the issue is now much worse. We now have written evidence that this practice does exist—not just with regard to reconsiderations but to primary claims. One can only wonder why we pay claims assessors to assess claims. It seems the practice is that a claims assessor makes a decision to reject a claim and then asks a law firm to write the decision—for a fat fee, of course. On further appeal, guess who gets the brief to fight the matter before the AAT? Yes, the same law firm. The tragedy of one particular case—and I have no reason to accept that it is an isolated case—was that the law firm recommended seeking further medical evidence, in which case the claim might have been accepted. That advice was ignored. The decision was cut and pasted under the claims assessor’s signature and sent to the claimant. It is fortunate in this sad case that an internal review was sought, the skulduggery was exposed and the decision was overturned. It should not have got that far, but it seems that this is now common practice.

This is unfortunate because it simply feeds the sense of ex-servicepeople that the DVA is combative and belligerent and will do anything to reject a claim. We know that with respect to veterans’ claims under the VEA this is not the case. True, there are complaints, but from my observation some of them have little merit. But this is the complaint about the MCRS in Brisbane. The DVA at estimates, as part of their confession
on this issue, said that one particular officer had been counselled. We need more than that. We need an assurance that this practice is not widespread. We need assurances that ex-servicepeople’s claims for compensation are being fairly assessed on their merits. We need to know that processes of fairness and good governance are being adhered to. We need to know that claimants are treated with respect.

The feedback I received about the Brisbane MCRS is to the contrary. This is very concerning because my impression is that not only does the DVA have a solid reputation for fairness among veterans but also this healthier culture was permeating the MCRS as well. We are very concerned about this issue. If nothing else, I ask the department to seriously look at this and perhaps provide a report on their findings and take urgent remedial action. Put simply: this is unnecessary aggravation. In fact, it might even be said that the MCRS are operating contrary to not just the letter but also the spirit of the law. I certainly look forward to having the matter cleared up as soon as possible.

Senator STOTT DESPOJA (South Australia) (7.50 p.m.)—I begin my remarks tonight on the Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005, the Appropriation Bill (No. 1) 2004-2005, the Appropriation Bill (No. 2) 2004-2005, the Appropriation Bill (No. 5) 2003-2004 and the Appropriation Bill (No. 6) 2003-2004 by referring to the issue of foreign aid. This government, unfortunately, has maintained a shameful record on overseas aid during its term in office, and this budget is no exception. The paltry commitment to overseas aid in this year’s budget once again reflects a lack of compassion on the part of government, and maybe even a political wariness of communities’ response to the spending of foreign aid. Australia is a member of a global community in which 36 million people die every year from hunger, one child dies from hunger every seven seconds, more than 1.1 billion people do not have access to safe drinking water, 2.4 billion people lack adequate sanitation, 840 million people suffer from chronic malnutrition, 42 million people are infected with HIV, 14,000 new HIV infections occur every day, 8,000 people die of AIDS related illnesses every day, uncleared landmines result in 15,000 to 20,000 casualties a year; and there are still an estimated 300,000 child soldiers.

These statistics represent daunting global challenges. There is no doubt that the most significant impediment to effectively combating them is the lack of commitment and resolve on the part of developed countries. A recent United Nations report indicates that progress in eliminating hunger and malnutrition has ‘virtually ground to a halt’. The UN has also documented evidence showing that at the present time more money flows from developing countries to developed countries than the other way around. In September 2000 all UN member states unanimously adopted the Millennium Declaration, which gave rise to the millennium development goals. I have referred to those goals a number of times in this chamber.

The MDGs are a set of global objectives to be achieved by 2015. Within that time the MDGs aim to, among other things, halve the number of people living in extreme poverty—that is, people living on less than the equivalent of $US1 a day—halve the number of people living in hunger, achieve universal access to primary education and reduce by two-thirds the rate of mortality for children under the age of five. They also aim to halt the spread of AIDS. Tragically, the UN has warned that the international community is falling well short of reaching the targets set by these goals. It is also extremely disappointing that the Australian government has refused to explicitly adopt the millennium
development goals as benchmarks for ensuring that Australia’s aid program is directly focused on the sustainable reduction of poverty. Once again, this year’s budget deliberately avoids any mention of the millennium development goals, and the aid commitment falls well below what is required for Australia to fulfil its obligations under those goals.

As a relatively wealthy global citizen, Australia has a responsibility to provide assistance to developing nations and to help ensure a more equitable distribution of the world’s resources. For many years our government has continued to fulfil its obligations in this regard. Our Prime Minister says that Australia has the strongest economy in the Western world, yet we are rapidly falling to the bottom of the list when it comes to our commitment to overseas aid. We were recently the only country to abstain from a UN motion that recognised the right to food. The US voted against the motion. We abstained from acknowledging people’s right to food. Unfortunately, this government has succeeded in making Australia one of the stingiest nations in the international community. Every year the government is called upon to increase its commitment to overseas development assistance. We were recently the only country to abstain from a UN motion that recognised the right to food. The US voted against the motion. We abstained from acknowledging people’s right to food. Unfortunately, this government has succeeded in making Australia one of the stingiest nations in the international community.

Interestingly, the government’s lack of compassion for the world’s poor stands in stark contrast to the generosity of Australia’s people. This is where I appeal to the government. If one of the reasons that we do not increase our aid budget is some kind of political wariness, then I think we are wrong. Personal contributions by Australian people to overseas aid have risen by 12.5 per cent each year for the past five years. It is imperative for the government to increase its overseas aid commitment in order to fulfil its obligations under those millennium development goals. I can assure this chamber that—as you well know, Mr Acting Deputy President Cherry—this is an issue that the Democrats feel strongly about. We are not going to be silent about it. We will continue to raise it. We believe the Australian community has demonstrated its generosity and that it clearly cares for the world’s poorest people. We will continue to pressure the government on this front.

Another appropriations measure that I would like to refer to is the family assistance package, particularly—and this is not surprising because of my ongoing policy interest in this matter—the maternity payment. Stop giggling, Mr Acting Deputy President. I will declare an interest, but I want to put it on the record—

The ACTING DEPUTY PRESIDENT (Senator Cherry)—It is noted for the record, Senator Stott Despoja.

Senator STOTT DESPOJA—and make very clear that Treasurer Costello’s comments on budget night in no way influenced my circumstances. For many of us who have been involved in the debate about paid maternity leave, the decision by this government on budget night to announce a maternity payment came as a big disappointment. I am not just talking about legislators. Business, industry, unions and academics—a range of people who have been debating and involved in this issue—were disappointed by the government’s response of not introducing paid maternity leave.

I think it is really important that people understand that there is a huge distinction between a maternity payment and paid maternity leave. The objects of paid maternity leave are different from those for family support payments for women outside of work. PML is a payment for women who forgo their salary as a result of the physical need to take a break from the work force when they have a child. Paid maternity leave
is a fundamental employment right for women. It is recognised as such by the International Labour Organisation and the International Convention on the Elimination of All Forms of Discrimination against Women. It is a workplace entitlement—or it should be—and it seeks to address disadvantage and inequality in the work force. It is likely to encourage work force attachment as much by the legitimacy it gives working mothers as by the financial incentive it offers.

We have not changed the circumstance that two-thirds of Australia’s working women have no proper access to paid maternity leave, but with the introduction of this maternity payment and the conditions surrounding it more than one million women who are casual workers are eligible for the $3,000 payment on the birth of their child but will have to go straight back to work because there is no leave entitlement attached to the maternity payment. The Democrats have made very clear that we value motherhood. We believe it is a valuable and important institution. Women who make the choice to stay at home must be rewarded and recognised for that decision. Similarly, Australia’s working mothers should be able to choose to have a child and not feel forced to give up their employment—or, indeed, their income—for a period of time.

A form of systematic discrimination exists in our society against those women in the work force who choose to have a child. Many of them feel that they cannot be up front with their employer about the fact that they are of child-rearing age or, indeed, that they want to have a child. When they do have a child many of them feel that they cannot take time off work. Indeed, legislation does not allow for them to take paid leave. Except for larger companies and some small businesses who have made the brave and responsible decision to provide paid maternity leave, many employers cannot provide that assistance. That is exactly why it needs to be government funded and nationally provided.

This government has chosen to treat the needs of working mothers as a welfare issue and not as a right when it comes to the rights of working women. The government maternity payment does not replace the lost earnings of taking leave to have a baby. In fact, it is less than half the amount in my private member’s bill, which allows for 14 weeks paid leave provided by government on a national level at the minimum wage. That would be around $6,543.60 before tax, and that model was emulated by the Sex Discrimination Commissioner, Pru Goward, in her proposal.

In the last week a lot has been made of what this $3,000 payment will mean for some women. There have been explicit statements that it will actually encourage some women, particularly teenage women, to go out and conceive in order to get this payment. There has also been discussion about women postponing the birth of their child in order to be eligible for the payment. A lot of this is scuttlebutt, some of it along the lines we have heard over many years—the recurring myth of teenage mothers going out to have lots of children in order to get welfare payments. It is an issue that is still perpetuated by some socially conservative legislators and decision makers, but there is no conclusive evidence to support that proposition.

I have done some research and I have to acknowledge that there are some hospitals around the nation that are very slow in performing caesarean sections at the end of this month and tend to be booked out in the first week of July. Last weekend when my friends Nicole and Craig Chung had their baby boy, Tristan, I said, ‘Is there anything I can do to help?’ They said, ‘Would you backdate the
maternity payment for us?” A lot of senators and members have heard those kinds of comment. But, instead of guilt trips for these families and allegations of greed or dubious motives, let us get this in perspective. If anything, it probably highlights how desperate some families are for some form of financial assistance from government. When we put it in perspective, $3,000 is not a lot in relation to the cost of bringing a child into world, let alone raising a child, as columnist Amanda Blair so cuttingly described in last week’s *Sunday Mail* in Adelaide. This payment should not be about the costs of a child; it should be about replacement costs for a woman’s income. It should be about subsidising income that is forgone as a consequence of a woman deciding to take time off to have a child.

My proposed model in the private member’s bill I have put forward of government funded paid maternity is a responsible and targeted policy. It provides financial support as a result of forgone earnings when the mother has to take leave. It is not a bonus. It is not a token payment. The government’s focus on fertility to develop their model was also flawed, because the issue is clearly more complex than a lump sum payment. To solve the fertility problem the government needs to provide many other supports such as greater workplace flexibility and more affordable and accessible child care. Even then, as we all know, it is really about choice.

The government has to get rid of this white picket fence notion and look at what the women and families of Australia really need. I hope that over the coming months both major parties will reconsider their family policies and particularly the issue of paid maternity leave. I hope the Labor Party will reconsider its maternity payment proposal and consider once and for all a paid maternity leave policy.

Lastly, I wish to refer to the issue of education and science in this year’s budget. The budget provides for a number of measures to assist universities that are not funded through the Higher Education Funding Act 1988 or the Higher Education Support Act 2003. Specifically, I would like to mention the $11.7 million for the Higher Education Loan Program, HELP; the $4 million worth of advertising to university students; the $24.6 million over five years to exempt Commonwealth learning scholarships from social security income tests; and the $5 million over five years to exempt fee waiver and fee pay scholarships from social security income tests.

I acknowledge that some of these measures are positive moves. Mr Howard and Dr Nelson’s new higher education policy will shift $1 billion over four years of costs from universities onto students. This will be through increased HECS fees at the majority of universities from 2005 as well as increased numbers of domestic full fee paying students. So we have got a massive user-pays policy and massive cost shift, yet these other policies, while good, will not make up for the amount that the government is failing to spend in the higher education sector.

To date, 23 of our universities have decided to increase their HECS fees with six universities yet to decide. Dr Nelson has already admitted that HECS increases over the next four years will cost students an extra $660 million and domestic full fee paying students will contribute around $350 million. Most of those universities who announced increased HECS fees for 2005 have indicated poor federal government funding as the reason they have decided to introduce these increases. Many of them indicated it was a decision they made reluctantly—regardless, they have still done it. Through the HECS increases, many universities have committed to funding scholarships for equity group stu-
tions over and above those provided by the federal government.

In the Higher Education Support Act 2003, the government did exempt Commonwealth learning scholarships from the social security income tests, but not other cash scholarships. Fee waiver and fee pay scholarships are also exempt from the social security income tests, but as the AVCC said:

... some institutions may prefer ways to provide financial support to students that extend beyond the traditional concept of scholarships.

The tight restrictions on scholarships are discouraging universities from offering scholarships for fear of not sufficiently enhancing the student’s life or education. The AVCC recommended in their submission to the HEEP review:

... scholarships that provide students with financial support should not be treated as income for the receipt of Government income support benefits.

As you would be aware, Mr Acting Deputy President Cherry, the Democrats have long supported the AVCC’s view and call on the government to introduce legislation to achieve that outcome, an outcome that will ease the pain of students receiving Austudy who are living below the poverty line—35 per cent below the Henderson poverty line on only $159 a week—and are not eligible for rent assistance.

As the Senate may recall, back in 1997 I introduced a private member’s bill to make part-time scholarships income tax exempt. To date, this private member’s bill has not been supported by the government or the opposition, but this issue remains an important one, particularly for those students struggling to study on low incomes and part-time scholarships. This issue will no doubt be re-examined through the Senate inquiry into student income support that the Democrats initiated earlier this year, which is currently under way.

Unfortunately, there was little good news for science in this year’s budget—there was some news, but not enough. On 6 May, when announcing the new package, the Prime Minister said:

I am delighted to announce a major boost to science and innovation in Australia through a $5.3 billion package that continues and strengthens the successful Backing Australia’s Ability programme.

Regrettably, science and innovation will not be boosted by BAA 2, and the emphasis of this package is more on harnessing new technologies than on discovery of them, and Australia will suffer accordingly.

Under this program, it is likely that our national investment into R&D of 1.55 per cent of GDP in 2001 will fall further behind the OECD average of 2.33 per cent in 2001. The Democrats, the Australian Vice-Chancellors Committee, the National Tertiary Education Union and the Federation of Australian Scientific and Technological Societies have all called for increased national investment into R&D with the OECD average as a medium-term goal. But the Prime Minister and, unfortunately, the science minister do not believe in such targets for science. The Prime Minister said:

Sometimes, therefore, you end up getting closer to targets other people would like you to set than you imagine.

The Democrats, along with many in the community, particularly the science community, believe such targets and measures are valid, as do the EU, Canada and, I note, Mr Richard Lambert, according to his address to the Press Club today.

In the first year of BAA 2—2006-07—funding for major infrastructure will drop by around $24 million, despite the government’s own report recommending increased funding
for research infrastructure. According to the AVCC, the sector requires an additional $405 million per annum to adequately support university research infrastructure, and this amount is likely to grow over the next two years as pressure to provide more matching funds is expected to increase.

Another program to suffer under BAA 2 is the CRC program, whose funding for 2005-06 has been revised down by $51 million and will then decrease further. But the changes to CRCs go further than just funding. In February this year, on behalf of the Democrats, I warned of the dangers to collaborative applied research into environmental and social issues resulting from the federal government’s changes to the funding guidelines for the CRCs. These new guidelines favoured research that could be rapidly commercialised for economic gain.

Recently, it was exposed that existing CRCs researching the Great Barrier Reef, rainforests, coastal zones, satellites and photonics will not gain further funding through the CRC program after failing to pass the first stage of the CRC selection process which considers the potential for economic gain of a CRC. We are still hearing conflicting messages on this issue. I seek leave to incorporate the last two paragraphs of my speech in Hansard.

Leave granted.

The speech read as follows—

However, this new direction imposed on the CRCs impacts even more broadly than just on public good research areas within the CRC program. The reduction in funding accompanying the change in focus of CRCs is forcing some CRCs to become much more commercial in their approach, thus considerably reducing the effort and resources available for research.

The Democrats support the role of research in economic growth, but we also support its public good role in raising living standards and solving major environmental challenges. Dr Nelson needs to understand that Australians have concerns other than the short-term economic performance of industry.

Senator WEBBER (Western Australia) (8.11 p.m.)—The Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005, the Appropriation Bill (No. 1) 2004-2005, the Appropriation Bill (No. 2) 2004-2005, the Appropriation Bill (No. 5) 2003-2004 and the Appropriation Bill (No. 6) 2003-2004, and indeed this government’s budget, are nothing more than an exercise in using taxpayers’ money to get the government re-elected. No Australian with access to a television or who reads a newspaper or listens to a radio can escape this conclusion. There is no doubt that the government will stoop to almost any level, will say anything and will do anything to win the next election. They are best defined by the popular term ‘desperate and dateless’, if you ask me. Their desperation is there for all Australians to see on their televisions, hear on their radios and read in their newspapers and in the unsolicited mail that they receive from this government on anything from ‘Strengthening Medicare’ to Landcare. It fills their letterboxes on a daily basis.

The government and the Australian people are dateless in the sense that the Prime Minister still refuses to call an election. Australians are waiting for their opportunity to mark their ballot papers, vote them out and put an end to this nonsense, but the Prime Minister, it would seem, still cannot make up his mind. While we wait for the great ditherer to come up with a date so that he can cease to be desperate, the Australian people are subjected to even more unsolicited advertising.

Have you tried avoiding government advertising? It is almost impossible. Indeed, we in this building should all be grateful that the parliamentary network does not accept advertising or else even in this place we would
be subjected to this waste of taxpayers’ money. Every day we get another announcement. Normally it is just rebadging money that is already allocated and that we already know about. And we all know that just around the corner is yet another advertising campaign.

Let us guess who is not complaining about all these ads—apart from the Prime Minister, of course. You guessed it: the owners of media outlets and advertising companies and, of course, the rest of the government. Like so much else in this budget, we are seeing the government spend money like we have never seen in the history of this country. If it were not enough of an insult that they are using taxpayers’ money to fund this advertising, some of Australia’s richest individuals and the companies that they own are the ones raking that money in. We in this chamber could all think of better uses for that money. Australians are, in fact, being ripped off not only because their money is being used in such a partisan way but also because they cannot actually escape it.

The encouraging aspect is that the Australian people are not actually falling for this trick. In today’s letters to the editor in the esteemed West Australian newspaper, Jack Simpson of Kalbarri writes:

I’ve got sick of watching that new hospital show on TV—Strengthening Medicare. Too many repeats. ...

Matt Summors of Binningup writes:

If what we read is correct, he—
the Treasurer—
has authorised around $120 million on the blatant misuse of taxpayers’ money to let us know what the press has reported for absolutely nothing. Don’t take the voters for mugs, Mr Costello.

And do we know how many letters were in the West Australian supporting the government’s advertising campaign? Again, you guessed it—not one. How many have there been since the advertising blitz started? You guessed it again—not a one. Just to demonstrate that this voter discontent is not restricted to my home state of Western Australia, I can quote a Mr Dengate, who wrote in today’s Sydney Morning Herald:

Last night, while channel hopping, I skipped from Eddie to Gretel to the Strengthening Medicare advertisement.

Could this rate as the most annoying moment in television history?
If it is not the most annoying, I am sure that people like Mr Dengate are even more annoyed when they understand where the money is coming from. For Mr Dengate and the others like him, it is coming out of their pockets. Where does this stop?

For the ‘desperate and dateless’ brigade on the other side, the short answer is that it will not stop until the election is called, because then they will be forced to stop. Even today we have Mr Howard saying that the ‘alert but not alarmed’ campaign might be making a comeback. We all remember that one. It was such a spectacular failure last time, with its fridge magnets and telephone hotlines, that this government are now seriously considering giving it another run. All it achieved was that it managed to keep your fridges safe and secure. They on the other side of the chamber have no shame. They are prepared to waste more taxpayers’ money, all for the sake of their own re-election. They will tell us that this advertising is all about advertising government programs—or, as Senator Abetz claimed in question time today, information campaigns—and that they are an important tool in ensuring that Australians are aware of what is happening.

On the Strengthening Medicare ads, Australians do not need to be aware of incentives for doctors to bulk-bill; doctors need to be aware—if the government really do have such incentives. This government has pre-
sided over the ruin of Medicare and bulk-billing for eight long years. Now that its own polling is telling it that the voters have had enough, we have the Strengthening Medicare campaign to advertise its MedicarePlus system. For all the money it has spent and all the money that it will continue to spend, it has not done the government any good at all. The Australian people, as represented in the latest Newspoll, believe that Medicare and bulk-billing are still the most important issues. For all the government’s work and for all its squandering of public money, the Howard government is still not preferred by the Australian people to address this issue. Its Strengthening Medicare campaign is actually counterproductive. All it does is reinforce in the voters’ minds that you would not need to strengthen Medicare if you had not actually allowed it to suffer eight long, hard years of neglect. So the message is not working, and it is clear from the complaints about the advertising that the frequency is not helping much either. Like so much else that this government does, it is not what you can see that is important. The message out there in the electorate is that they do not believe this government’s policy and they are certainly fed up with the frequency of the ads.

I have a suggestion to make. Why not steal another Labor Party policy so you can extend your largesse to more television station owners? I wonder why the government do not want to support our suggestion for a fourth TV network. At least that would mean that they would have another place to run their ads. Why restrict themselves to the current arrangement? Seriously, the government should rethink their approach on advertising. If people in the electorate are comparing the government’s ads to Eddie ‘Everywhere’ and Gretel Killeen, for example, you have a serious problem. In fact, when talking about advertising, it is not so much the straw that broke the camel’s back as the fact that this government have put the entire hayshed on the camel’s back. If the message is wrong then no amount of advertising is going to change the minds of the Australian voters.

The government should be spending our money—and it is our money—on fixing Medicare, not wasting it by trying to convince the Australian people that they have fixed it when indeed they have not. What most annoys Australians about this whole process of government advertising is the false promises that were made to them by Mr Howard before he became Prime Minister. In a press release on 5 September 1995, Mr Howard claimed:

In a desperate attempt to find an election life raft, the Prime Minister is beginning an unprecedented propaganda blitz using taxpayers’ money.

Sound familiar? He continues:

This soiled Government is to spend a massive $14 million of taxpayers’ money over the next two months as part of its pre-election panic.

That also sounds familiar. He continues:

Judging by information coming from within the public service, if the full communication barrage runs its course it could reach $50 million.

This Government has effectively allowed the Labor Party to get its fingers into the taxpayers’ till.

This grubby tactic will backfire on the Government. Taxpayers will see through it. They don’t want their money wasted on glossy advertising designed to make the Prime Minister feel good.

Keating—the then Prime Minister—is about to boost Government promotion to a massive new high—

if only we had known!—

and it’s time a brake was put on this fraud.

Today’s Shadow Cabinet meeting in Gladstone decided that, in Government, we will ask the Auditor-General to draw up new guidelines on what is an appropriate use of taxpayers’ money in this area.
There is clearly a massive difference between necessary Government information for the community and blatant Government electoral propaganda.

Propaganda should be paid for by political parties.

I agree. He continues:

Over the last few days the Labor Party has spent $150,000 of its own money on an advertising stunt which disappeared without a ripple.

Now, instead of the Labor Party using anymore of its finance, the Government is going to use taxpayers’ money on a disgraceful scam.

In any other form of business, the shareholders would revolt—

if only Mr Howard had thought more carefully when choosing his words—

... throw out the management which wasted their money. The problem for this Government is not communication. The problem is that it is tired—

I agree—

... it has broken too many promises and it has hurt too many people.

This propaganda blitz will make the electorate feel even more angry.

Families, welfare organisations, small businesses, the elderly and the youth of Australia can all see far better ways to spend $50 million than self-congratulatory mirage-making.

Indeed. All we have to do is update the numbers and substitute the words ‘Howard’ for ‘Keating’ and ‘Liberal’ for ‘Labor’ everywhere they appear in this press release. We know that at least Mr Howard maintained one commitment: to let the Australian National Audit Office report on government advertising. The ANAO did just that. What did Mr Howard do? Nothing—not a thing. Just go back to what he said in his press release. I remind senators again:

Today’s Shadow Cabinet meeting in Gladstone decided that, in Government, we will ask the Auditor-General to draw up new guidelines on what is an appropriate use of taxpayers’ money in this area.

You have to give Mr Howard some credit. He honoured the easy part of that promise: at least the ANAO drew up the guidelines. What about the tough part, the introduction of these same guidelines? The man of steel, or so Mr Howard likes to be proclaimed, is exposed as the straw man—talk and talk, make promises to the straw man for the Australian people and then do absolutely nothing.

Even today in question time the government admitted they are still using the 1995 guidelines. So much for that emphatic shadow cabinet decision. However, as we learnt today, there is one important exception: they are not even following those guidelines. In fact, they are making things up as they go along, as far as I can work out, all at the expense of the Australian people and all for the government’s own benefit.

It is now time for the Australian government and this Prime Minister to honour the commitment that was made nine years ago. Let us stop the farcical situation of having taxpayers’ money being spent to tell them things they do not want to hear, that they do not believe, for the benefit of this government. It is the case that unless the government stops the rot now it will have spent millions of dollars for no purpose, when everyone in this chamber can think of better ways of using scarce government resources. It is a misuse of appropriations to fund the advertising of the government of the day in such a blatant and partisan way. No longer should we allow the few to spend the money of the many to try to convince the many to re-elect the few.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (8.26 p.m.)—In the interests of maximising participatory input, I seek leave to incorporate my speech on the second reading.

Leave granted.

The speech read as follows—
I rise to speak about World Refugee Day which was celebrated last weekend across Australia and all over the international community.

I would like to take this opportunity to remind the Chamber of the recent lapse of HREOC's deadline on June 10 which was to see the release of all children currently in detention.

As you will remember the recommendations flowed on from a significant report into children in immigration detention which the Government chose to table at a time when a vast amount of media and public attention is being focused on the budget and on early election speculation.

Despite the fact that the findings in the report found that children in detention had suffered irreplaceable harm emotionally and physically, the Government has remained fairly dismissive and contemptuous, citing that the precautions were deemed to be necessary.

We made a promise that we would not let this historic report sink into obscurity and to keep this promise to the children who are still languishing in detention.

And when we talk about the effect on children of our refugee policies, we must acknowledge that there is a wider effect than just the kids being held in our detention centres. Of the so-called ‘single’ men held in detention, many of them are fathers separated from their wives and children. The department refers to them as single men because it is easier to deflect public sympathy this way. But many of these men are not single. They are fathers. Fathers who fled their country of origin to seek safety. Fathers who chose not to risk their children on the dangerous boat trip.

On one hand, we have the department vilifying people who do not have the luxury of a safe location to house their children while they seek asylum and are thus forced to bring them with them on the journey. But on the other hand, people who can find a temporary safety house for their kids are inflicted with the indignity of the department denying they are fathers at all—calling them single men in order to reduce public sympathy for them.

And once their claims are assessed and they are granted refugee visas, many of them are still denied the right to be fathers. Refugees who hold temporary protection visas have limited access to family reunion programs to have their wives and children brought to the safety of Australia. The Immigration Minister seems preoccupied with the threat that asylum seeking men might marry into the Australian community, yet she does not allow them the ability to bring their own family here.

The environment has changed somewhat since the last election. In 2001 we saw the Tampa incident which, fuelled by the events of September 11, determined the tone and climate for the federal election.

In the wake of Tampa, the Government introduced the Pacific Solution. The Pacific Solution involves intercepting people before they manage to get to the mainland and taking them against their will to either Manus Island or to Nauru. As Julian Burnside so eloquently points out:

“The detention of people in those places is indistinguishable from the detention of those in Guantanamo Bay but for this difference: the people being held in Guantanamo Bay are suspected for serious offences. The people who are detained, equally isolated, equally denied access to legal help, equally abandoned by every country in the world, the people in Nauru and Manus are not suspected of any offence whatever, unless it could be an offence to try to save your life when fleeing from Saddam Hussein and the Taliban.”

In fact our Government considered Saddam Hussein such a danger to the international community that we become part of the coalition of the willing and invaded Iraq against mass world wide protest. Yet despite this the Government still refuse to grant the remaining Iraqi detainees a visa. It is obviously that this is a policy of convenience.

The current system of mandatory detention and the Pacific Solution is economic irrationalism at its worst. The administrative reasons for detention are false and the costs far outweigh the purported benefits. The system has been denounced by major NGOs, churches, lawyers, medical bodies, community groups and concerned citizens.

The current estimate for detention is approximately $87 million per year for accommodation, staff and other administrative costs.
The Pacific Solution and Manus Island to date has cost taxpayers $84 million per year.1 This is not yet taking into consideration the additional $230 million that has been wasted on building detention centres in the past 3 years.2

Australia’s system of mandatory detention violates Article 9 of the International Covenant on Civil and Political Rights (ICCPR). This conduct is intentional and is part of the systematic attack directed at those who arrive in Australia without papers and seek asylum.

To rub salt into the wound, following the damage that is inflicted on these people, when they are released from detention, some of them are presented with a bill for the cost of being held.

This reminds me of the Mastercard ads—Accommodation in Port Hedland—$214,000; damage caused to Australia’s reputation and the damage inflicted on refugees in detention—priceless.

This government has shown contempt for human rights while posturing as champions of decency and family values. This is a government who justifies locking children up in detention as necessary.

This detention has been found to break child protection laws. It has been found by the courts to be a form of child abuse. The government is saying that child abuse is acceptable. That it is necessary in order to protect our borders, protect our country, and protect the Australian way of life.

The government wrongly accused asylum seekers of throwing children overboard. John Howard stated that these were not the values of Australian people. Well we since found out that John Howard was wrong in that asylum seekers did not throw their children overboard.

And it seems that he is wrong on another count—child abuse is part of the Australian values that John Howard holds dear. Child abuse is acceptable and necessary in order to secure a policy outcome.

Hopefully as we are coasting into the looming election we will not see refugees again demonized and used as an election tool to stir up hatred and fear amongst the community.

However, we do acknowledge that there have been some positive measures that the Government has introduced. Such as increasing the numbers of visas for the refugee and humanitarian programs, with matching funding increases for the settlement services provided to those categories.

While the Australian Democrats welcome this positive step, it is overshadowed by other areas of the Immigration portfolio which fall far short of international law and conventions. Australia cannot repair our negative reputation in refugee policy by offering an extra 2000 places to the people we choose to come here.

There is still much more that must be done.

People who are on Bridging Visa E (BVE) for instance. People on this visa face conditions that force them into the private charity system, reliant on NGOs or ad-hoc community groups for basic needs such as food and shelter.

95% of people on BVEs have no access to Medicare or work rights.3 68% are homeless or present high risk of becoming homeless. There are approximately 8000 people on BVEs.

This cost of supporting these people is already being paid by the welfare sector and community groups. The government already has the Asylum Seekers Assistance Scheme in place, but it is only available to a select few asylum seekers and only for a limited period of their process. This program should be extended to be available for all people on Bridging visas for the entire duration of the protection visa application process.

And while they are at it, they could grant this program to all people in detention. We all know that mandatory detention is on the way out. It’s just a matter of time. The government can’t sustain this policy in the face of condemnation from UNHCR, Amnesty International, the Red Cross, the Uniting Church, the Catholic Church, the Anglican Church, legal and mental health professionals and committed ordinary Australians who have formed groups such as Rural Australians for Refugees, ChilOut and RAC among many others.

Anyone who does not pose a significant health or security risk could be immediately released on a bridging visa with work and Medicare rights and access to the assistance scheme. This would save over $50 million per year in running costs alone.
That's not including the ongoing costs of mental health care we have to provide to refugees who are eventually granted visas, refugees this government has tortured into serious mental health conditions.

We all know the reasons why detention does not work and must be ended. It is child abuse. It breaks international conventions such as the Convention on Refugees, the Convention against Torture, the Convention on Civil and Political rights. We know from health professionals that it creates serious psychiatric disorders.

We know that it costs more money to detain people than to release them into the community. We know that it does not protect our borders or grant Australians greater security. The only thing it gives us is the knowledge that Mr Howard's government can sustain a policy in the face of overwhelming evidence that its expensive, damaging and abuses human rights. Refugees deserve better. And the Australian community deserves better than to have their taxes wasted on such a system as mandatory detention.

1 As of February 2004, $170m has been spent on the Nauru and Manus Island facilities. To allow the centre to continue Nauru has also been granted aid packages of $41.5m for 2001-03 and $22.5m for 2003-05.

2 MPS 33/2002, Minister for Immigration.

3 Justice For Asylum Seekers 2003.

Senator O’BRIEN (Tasmania) (8.26 p.m.)—I do not have a speech to incorporate so I will have to take the time of the chamber this evening on some matters that touch upon this debate on the Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005, the Appropriation Bill (No. 1) 2004-2005, the Appropriation Bill (No. 2) 2004-2005, the Appropriation Bill (No. 5) 2003-2004 and the Appropriation Bill (No. 6) 2003-2004 and are very relevant to a debate that occurred last night. That will become clear during the presentation of my contribution this evening. In this year’s budget papers there was a little-noticed item: an alteration to a subsidy for the Bass Strait Passenger Vehicle Equalisation Scheme. Its funding impact was costed at zero in each of the four out years: 2004-05 through to 2007-08. One might wonder why a Tasmanian senator would rise to talk about that in the context of it being a zero, zero, zero, zero outcome in the budget papers. One might have thought that that was an entirely neutral outcome for my state. Nothing could be further from the truth.

It is very well known in tourism circles that Tasmania is the jewel in the crown of the domestic tourism industry insofar as tourism outcomes, growth and attractiveness. From travelling around the country and talking to the tourism industry I can say that it is an industry that is envied around the country. It is an industry that is perceived to have the support of its government and a marketing program and access arrangement that have delivered unprecedented successful outcomes. There has been great success brought to Tasmania.

The Tasmanian state government under Premier Jim Bacon attended to some of the significant issues about access to the state, particularly by leveraging additional air transport into and out of the state for tourism. It did so, firstly, by encouraging Impulse Airlines to establish a service into Tasmania—and, when that was handed over to Qantas, by gaining an assurance from Qantas that it would maintain the additional seats into Tasmania—and then by obtaining the services of Virgin Airlines, initially into the airport at Launceston and then extending that into Hobart, so that there could not be said to be a problem with air access into the state.

The Tasmanian government then extended the sea service into the state by replacing one ferry with two newer, faster ferries, providing a daily service each way between Melbourne and Devonport. Following that, it added a further ferry service, operating in the
peak period three days a week from Sydney to Devonport. What relevance is that to the budget? Of course, the relevance is that the budget item that I referred to was the capping of the Bass Strait Passenger Vehicle Equalisation Scheme. In the May budget the government decided to cap the subsidy for the Sydney route and limit the routes eligible for the subsidy to those which are now being operated—that is, the Melbourne to Devonport and the Sydney to Devonport routes. One might say, given that there is no financial impact, what is the problem? The problem is that this limit was not there in terms of the operation. Firstly, there is no ability to predict the future with regard to the needs of the service from Sydney to Devonport. But, probably more importantly, there is no ability for the industry, the state government or the Commonwealth to predict the need for extending that service to services from other ports—for example, Brisbane or the Port of Adelaide—but also diversions of that service for special occasions or for emergency purposes to other ports, such as Bernie, Bell Bay or Hobart. Under the announcement in the budget, if the ferries travel from any port other than Sydney or Melbourne or if they arrive at any port other than Devonport, the passenger vehicle equalisation scheme will not apply.

I referred to this matter during the Senate estimates. I asked about the government’s decision to alter these arrangements. The Department of Transport and Regional Services confirmed that there was no consultation with the Tasmanian tourism industry or with the Tasmanian government before the decision was made to cap and limit the subsidy. Further, the department confirmed that they undertook no analysis to assess the economic impact on our tourism industry or the economic effects which might flow from the announcement of the subsidy. That is a rather remarkable admission given, as I said, that substantial success of the tourism industry in Tasmania has been built upon access. But it has also been built on a commitment from the government of Tasmania to promote the industry. That commitment had a lot to do with former Premier Jim Bacon.

Jim was a person of great capacity. I met Jim first in 1983. The catalyst for our first interaction was the reform of the Tasmanian Trades and Labour Council. It is interesting that the people involved at that time included me, Jim Bacon, Paul Lennon—the now Premier of Tasmania—Senator Nick Sherry, and I seem to vaguely recall that Senator Shane Murphy may have been around the traps at the time as well. That reform process—and Mr Lennon was on the other side, if I can put it that way, to Jim Bacon, Nick Sherry and me—took a number of years. But that reform saw a change in the leadership of the Tasmanian Trades and Labour Council towards the end of the 1980s. Jim became secretary; I became president.

As a result, I had a close working relationship with Jim Bacon. We had our differences, but nothing which would ultimately damage our long-term friendship. One of the first matters that drew the involvement of the Trades and Labour Council to the attention of the Tasmanian government occurred under the Field Labor government. A consultation process was established between Labor and the unions. Jim and I were involved in many consultations with Michael Field and his government. The Field government were addressing the financial mess left then by the Gray Liberal government. Talk about a budget black hole for Tasmania—in this case, it was more of a chasm than a hole—and the state was faced with some very difficult decisions. Jim and I and others spent quite some time trying to soften the blow for Tasmanian workers, whilst the government were trying to juggle the finances to reel in
the enormous debt, which Mr Robin Gray and his government had left the Tasmanians.

During all that period I could see that Jim wanted to find a solution and, whilst he had the interests of Tasmanian unionists and workers at heart, he wanted to talk about the solution, not just the problem. He wanted to find solutions, he wanted to involve himself in the finding of those solutions. That was the nature of the man. I saw then that Jim would try his hand at politics, and I wondered when it would happen. When, in the mid-1990s, it became clear that the time had come to find a new Labor leader for Tasmania, I and many others in the Labor movement turned to Jim, and history tells us just how successful Jim proved to be. I will simply say that my leader, Senator John Faulkner, has captured the sense of the amazing success that Jim achieved electorally.

One might say that these are matters that could well have been addressed last night, but I like many of my colleagues still feel very raw about Jim’s passing and it was very difficult for us to make comment last night. But I did not want to let this week pass in the context of the importance of Jim Bacon to Tasmania, its people and its economy and the lives of so many people, including my own, without making some comment on the record.

I did want to touch on one of Jim’s great successes, and it pertains to the tourism industry, an industry in the portfolio which I am charged by Labor with the responsibility to run. After the last election Jim undertook to have responsibility for the tourism portfolio. Let me give the Senate some of the statistics of his success, because they are worth recounting. The number of visitors annually to Tasmania has grown from 501,500 in 1998 to 742,900 in 2003. The enormity of that nearly 50 per cent increase in tourist numbers is a demonstration of the great success of the strategy of the government and no-one in Tasmania—not the opposition in Tasmania, certainly—not in the national tourism industry has anything but positive things to say about Jim Bacon’s government and the tourism industry in Tasmania.

I talked about the impact of the Bass Strait Passenger Vehicle Equalisation Scheme and the problems that this budget will visit upon it. The number of visitors to have arrived by sea has grown in the same period—1998 to 2003—from 96,700 to 188,500. The amount that tourists spend is often a matter of conjecture, although governments across the country have put in survey and other measures to assess that as a value to the economy. That value for Tasmania has been assessed to have grown from $557 million in 1998 to $1.02 billion in 2003 and is still growing. The number of people employed in that period in the tourism industry has grown significantly also. In fact, the growth of the industry has been so great that the infrastructure growth needed to manage it is struggling to keep pace with demand. Projects worth $400 million are currently on the drawing board for the state of Tasmania or are under way.

I wonder, given those statistics, why the federal government would not consult with the Tasmania government when it altered the Bass Strait Passenger Vehicle Equalisation Scheme, particularly altering it in the way that it did—even though, as I said at the outset, in the coming and the three subsequent out years the budget papers show no savings from the measure. The numbers in the PBS are zero for each of the four out years. It is remarkable that Mr Whiteley, the state member for Braddon—I believe he is a front-bencher for the Hidding opposition in Tasmania—attempted to defend the federal government’s decision to cap the Bass Strait Passenger Vehicle Equalisation Scheme on the basis that there was something improper
about putting it on a ship running from Sydney to Devonport and that it was only ever intended to cover the Melbourne to Devonport run. Certainly the Hansard of estimates will show that that was never the case. Indeed, every ship that comes to Tasmania has to cross Bass Strait and the subsidy is only for that part of the journey.

Returning to the impact on my state that Jim Bacon as Premier had, it would be folly to talk about Jim as having only had a success with tourism. He had a massive influence on the arts. This included the development of an international arts festival, Ten Days on the Island—an important tourism and cultural event which has been running since 2001; an inaugural Tasmania Pacific Region Prize for fiction—the richest single fiction prize in Australia of $40,000; the construction of the Federation Concert Hall; additional moneys for the Tasmanian Symphony orchestra; and a host of other achievements.

Developments in the Tasmanian economy and its infrastructure include, in particular, a gas pipeline and a soon to be commenced electricity cable under the Bass Strait, which will have significant effects on the energy economy of the state, and the vision to refuse to sell the Hydroelectric Commission in Tasmania, which was slated for sale by the Rundle government—the government replaced by Jim Bacon’s government. Now with the combination of wind power and hydro power it will be one of the most efficient, renewable electricity generation systems in world, with the ability to effectively shut off the water and run off wind when the wind is blowing and vice versa. It will also have the ability to shut down the dams and purchase power from Victoria via the undersea cable from Victoria when it is economically viable to do so or to send electricity the other way when it is commercially advantageous to sell it to Victoria. That is one of the great advantages that would not be available to the state of Tasmania had it not been for the foresight of Jim Bacon leading a Labor government.

In the very short time that I have available, can I say that Jim was, as I said at the start of my contribution, a friend of mine for over 20 years. He was a great supporter of the Essendon football team. I thought it so appropriate that they played their game on the weekend wearing a black armband in respect for Jim’s passing. He has done great things for the sport in Tasmania, but he has always been a loyal, if not fanatical, supporter of Essendon. I think that my state will remember Jim as a passionate football supporter, a passionate Essendon supporter but, more importantly, a passionate supporter of the people of Tasmania.

He was a person who had time for everyone, who would stop in the street and talk to anyone and who had the ability to relate to those at the highest and at the most humble level of society. He is a man who will be greatly missed, certainly by me and by my colleagues. My staff tell me that on Monday the phones at my office did not ring. It was eerily silent. The demeanour of people in the streets was so obviously that of people who were badly affected by Jim’s death. I think nothing more can tell you of the measure of the man than that the ordinary person in the street would have their lives so affected and that it would be so noticeable. I just hope that we continue to appreciate the greatness of the man, because I certainly will.

Senator CHERRY (Queensland) (8.46 p.m.)—I rise tonight to speak about the activities of Geoscience Australia. This is an organisation that the Democrats have had in their sights for some years, and I should acknowledge the work of my Queensland colleague Senator Bartlett. He has been pursuing the activities of Geoscience Australia
through Senate estimates for some years. Our particular focus has been on the activities of Geoscience Australia in their promotion of oil drilling and exploration in the areas adjacent to the Great Barrier Reef. What particularly sparked our attention was the government’s release of its energy white paper last week, which states at page 53:

... Australia has some 40 offshore basins that display signs of petroleum potential, and half remain unexplored due to the cost and high-risk nature of exploration in remote frontier areas. Encouraging further exploration in these areas is in Australia’s interest and is a high priority for government.

Over the page is a map that shows in yellow an area marked as a clear frontier area, which is now a high priority for exploration by the government. The Queensland plateau and the Marion plateau directly abut the boundaries of the Great Barrier Marine Park. The Democrats are extremely concerned that this white paper evidences the high priority the government now gives to exploration for petroleum potential in the areas abutting the Great Barrier Reef. It links up with what we saw in the federal budget earlier this year, where there is a 150 per cent tax break for subsidising further exploration for petroleum. This shows that the Howard government is obviously very interested in pursuing petroleum exploration wherever it can find it. When you take into account the 150 per cent tax concession for promoting exploration and the white paper identifying the area adjacent to the Great Barrier Reef Marine Park as an area of high priority, it is quite clear that the Howard government intends opening up this area for oil exploration and petroleum drilling. The Democrats find that utterly unacceptable. I must say it is extremely concerning to see in a white paper from the Howard government that this area is highlighted as a high priority area for potential exploration activities.

We have been pursuing this issue for many years, and we have found over the years that the government has denied in this place and in estimates committees that there is any interest in exploring the area adjacent to the Great Barrier Reef, whether it be the Townsville plateau, the Townville trough, the Marion plateau or the other areas in that zone. In fact, going right back to 1998, the then resources minister, Warwick Parer, who was nicknamed ‘the minister for coal’ in this place, said quite clearly in estimates committees that he did not believe that there had been any exploration in the Great Barrier Reef area in the previous 30 years. How wrong can somebody be? We have explored this through returns to order and through Senate estimates committees—back to the 1970s, into the 1980s and the 1990s, and even into the noughties—and on occasion after occasion we have found evidence that the government has been promoting exploration in the Great Barrier Reef region.

I want to point out a couple of examples of the particular activity that the government has been promoting. In 2001 Geoscience Australia was promoting exploration in the Great Barrier Reef area through the ocean drilling programs vessel, the JOIDES’ Resolution. It was conducting drilling operations inside the Great Barrier Reef area but it claimed that the cruise was purely scientific—as the Japanese claim whaling is a purely scientific exercise. The vessel contained at least half a dozen employees of the oil and drilling industries who were drilling in locations previously surveyed by both a CSIRO vessel and an earlier JOIDES’ Resolution trip. Why on earth did that trip occur, other than for exploration for petroleum and oil potentials in the Townsville trough and in the Townsville plateau area?

We know from internal memos from the Queensland Department of Mines and Energy that this area potentially contains up to
five million barrels of petroleum. That compares with four million barrels of petroleum in the entire Gippsland-Bass Strait area. It shows just how potentially lucrative this area is to the oil and gas companies of Australia and why this government is under such enormous pressure to open up this area for exploration. It also shows why Geoscience Australia, despite their continual denials about this area being opened up for exploration, are in fact exploring this area. They are continuing to drill and to put down trips in this area, with their friends from the petroleum companies, to prove the potential of what exists in the Townsville trough and the Townsville plateau area.

The Democrats are concerned about what this all means for the future. If you keep gathering this information and this material eventually the pressure will rise to open this area to full mining for petroleum resources. We are particularly concerned over the use of synthetic aperture radar technology. Earlier today the Senate passed a motion, a return to order, seeking from Geoscience Australia all its information in terms of what it has gathered using synthetic aperture radar technology. This is vital technology that can be used through satellites to identify whether there is potential for an oil seep in an area. This technology can be used for environmental purposes—and the Democrats acknowledge that—and it is sometimes used in studying oil spills; however, the cost of using this satellite technology suggests that its use represents investment in an expected financial return.

It is quite clear from the evidence that Senator Bartlett has procured through the estimates process that there has been a range of joint ventures and quasi commercial arrangements between Geoscience Australia and various oil and petroleum exploration companies to do with the Townsville trough in particular and the Marion and Townsville plateaus more generally. It is quite clear that there has been cost sharing going on in using this very expensive technology to try to work out exactly what potential this vital area adjacent to the Great Barrier Reef has.

It is clear that the Australian people, particularly the people of North Queensland, need to know exactly what Geoscience Australia has found through its various searches and activities. We need to know who owns that information. Is it owned by the public? Is it owned by the oil or petroleum exploration companies? We need to know what the potential is here so that we can be prepared for the inevitable fight to open up this area for actual oil and petroleum exploitation, because it is going to come.

I have very little faith in the assertions of this government that it will keep this area pristine and outside oil and petroleum exploration. It is quite clear when you read the white paper that the Prime Minister released last week that the government has said exploration in frontier areas is a high priority. It has said that the exploitation of fossil fuels of this country is a high priority. It is such a high priority that we will not sign the Kyoto protocol, we will not engage in the promotion of renewable energies and we will take every opportunity we can, including a 150 per cent tax rebate, to promote the opening up of new fields for petroleum and oil exploration and exploitation.

The Democrats are extremely concerned about what is going on in this area. We are extremely concerned that the government’s white paper shows this is a new priority area for the government to explore. Given the previous track record of Geoscience Australia in terms of showing quite clearly that it is prepared to say one thing and do another—say there is scientific research only on its vessels going into the Great Barrier Reef region, but include a whole bunch of oil
company executives on those boats for no apparent reason other than to enjoy the scenery—we need to get to the bottom of what this government knows about oil and petroleum reserves on the Great Barrier Reef, what additional information it is gathering and what it intends to do with it. The Democrats put the government on notice that we will continue to pursue this issue through estimates, through this chamber and through the return to order. We urge the government to respond to the return to order, which will be reported on tomorrow, and we urge the people of Queensland to be vigilant about what this government intends to do in terms of opening up the Great Barrier Reef and its adjacent areas in the Coral Sea for oil and petroleum exploration and exploitation.

Senator MOORE (Queensland) (8.55 p.m.)—I rise tonight in the debate on the Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005, Appropriation Bill (No. 1) 2004-2005, the Appropriation Bill (No. 2) 2004-2005, the Appropriation Bill (No. 5) 2003-2004 and the Appropriation Bill (No. 6) 2003-2004 to add my voice to the amazing number of questions and comments that have been heard about the volume of government advertising which has been inflicted on, or shared with, the Australian community over the last few months. The use of government advertising to promote campaigns to inform the public is not new, but we are questioning—and this was questioned at length through the Senate estimates process over the last couple of weeks and in subsequent questions in the House and in the Senate—the direction, the volume and the timing of the advertising campaigns, particularly since the beginning of this year.

We found out through Senate estimates that up until the end of this financial year over $12½ million of taxpayers’ money has been spent on promoting government programs. This covers a whole range of areas and these figures had to be extracted bit by bit, program by program and minister by minister. It would be very useful to find somewhere a full list of every skerrick of government advertising—where, when, how and why. That would be a useful exercise instead of going through the process of Senate estimates.

Questions were asked through the process and we found $12½ million up until now. We also found that, over the next six months, there is an expectation of a further $100 million worth of government advertising to the community. That is what we know about; that is what is planned. Of course, you could not find the detail of this advertising in the estimates process in which I was involved—the Department of Family and Community Services, an area which spends a great deal of money talking with the community, and necessarily so because it spends a great deal of the national budget. In that process we were trying to find out about the advertising campaign for the highly promoted family tax benefit. Exactly how was this program going to be advertised and expressed to the Australian community? We found out in the beginning that there was some advertising being done up until the end of this financial year—a relatively small amount. Two weeks ago we could not find out exactly when that was happening, but we did find out within three days—the advertising campaign started in the media. It would have been useful if we had had this information on the day.

We found that the bulk of the advertising was going to occur in the months afterwards. We asked them quite openly exactly what format it would take, how it would be done and what approval process it went through. None of that information was available because it had not been finalised. Advertising programs for the July-August-September period had not been finalised in June. That concept is difficult to understand. That is
what we were told, and we naturally accept
the department’s processes. But we did find
out through Senate estimates though how
much it is going to cost—or what we think it
is going to cost, because once again they
were estimates, round figures. The actual
detail could not be shared at that time. So
once again, through discussions in the Senate
and in the House, we have to go through the
process of extracting exactly how much
money each bit costs, and we cannot find
that out until it is completed and the bills
have been received, which is an amazing
piece of budgeting.

The whole issue of government advertis-
ing and where the line is drawn between ad-
vertising a program and whether it floats on
to a political aspect is not new. There have
been numerous debates across a whole range
of democracies about how this should be
done, and in Australia it is not a new issue
either. Senator Webber in her contribution
earlier spoke about comments made by our
current Prime Minister when he was the
Leader of the Opposition. He talked about
deep concern about the volume of govern-
ment advertising and how it was done, the
timing and exactly where the line was drawn
between the information aspect—which is
the absolutely worthy topic of telling people
about a program and how it works—and
where that disappears into the aspect of pro-
moting a government. One of those things, of
course, must be timing. Indeed, one of the
questions we are asking is exactly how and
when the timing operates. It is no surprise;
even though we do not live in a community
that has set dates for elections, everybody
knows that an election is coming up very
soon.

Surprisingly, we are now finding out
about the introduction of the advertising
campaigns for the various programs, be they
the Medicare program, changes in family
payments or various things to do with super-
annuation, in that magic period of July-
August-September. So something the Austra-
lian community can look forward to is an
amazing amount of information in their let-
terboxes. We have already had the Medicare
program. Everybody received fulsome and
highly photographic information in very at-
tractive packages. Every person was to get
one of those, and I do believe that people in
aged care homes will now be getting a large
bulk of that information as a result of a ques-
tion I asked at the Senate estimates hearings
when trying to find out how it would be
done.

We also expect to have more information
on television and on the radio because, of
course, people quite rightly have to have
multifaceted campaigns. The volume of
those campaigns is most interesting, and I
think Senator Webber also talked about the
volume of the TV advertising and the cost of
that. No-one can question the amount of
money that those ads must be costing. We do
not yet have the answers to what those costs
are because we cannot find out until after the
bill is paid.

*Senator Ferris interjecting—*

**The ACTING DEPUTY PRESIDENT**
(Senator Brandis)—Order! Senator Ferris, interjecting is disorderly.

*Senator MOORE—* We deeply appreciate your help, Senator Ferris. The Australian national audit process on this issue has been going on since at least 1995, with reviews of exactly how government advertising operates. We have had two audit reports that talk about the importance to the community and to the government of making sure that advertising campaigns are clearly identified, based on fact and in no way can be confused with party political advertising. Clear lines have been drawn and there are rules for what constitutes an appropriate use of advertising to inform the community, as opposed to party
political propaganda in many ways. As a result of those audit campaigns, recommendations were made that there should be firm guidelines. In the September 2000 report of the Joint Committee of Public Accounts and Audit there is a short recommendation, which is a good thing for any recommendation—and there was only one—to the government that says:

The Committee recommends that the Government adopt the Joint Committee of Public Accounts and Audit's draft guidelines for government advertising.

The date of that recommendation was September 2000. There has not been a reply to that recommendation as yet, but we are hopeful that there will be a reply very soon. Draft guidelines were created at that time for advertising, based on the same questions and concerns that we heard about today and that we heard about from the then Leader of the Opposition in 1995, who was most upset about the problem of Commonwealth money that might have been confused with advertising for a particular purpose. He said:

There is clearly a massive difference between necessary Government information for the community and blatant Government electoral propaganda.

Referring to the government of the day in 1995, the then Leader of the Opposition went on to say:

The problem for this Government is not communication. The problem is that it is tired, it has broken too many promises and it has hurt too many people.

... ... ...

Families, welfare organisations, small businesses, the elderly and the youth of Australia can all see far better ways to spend $50 million than self-congratulatory mirage-making.

They are very true comments, and I hope that we can all share them now and learn from them. These quotes were from the then Leader of the Opposition in 1995, who was soon to be the Prime Minister and who had very firm feelings about this issue. In 2000 he received information from the Auditor-General and from the Joint Committee of Public Accounts and Audit which said, amongst other things:

Dissemination of information may be perceived as being party-political because of any one of a number of factors, including: what is communicated; who communicates it; why it is communicated; what it is meant to do; how, when and where it is communicated; the environment in which it is communicated; or the effect it is designed to have.

These are all very effective dot points, and if that particular test could be clearly and openly applied to every piece of advertising, there would be a lot less angst. What we are trying to find out is why a clear recommendation from 2000—about which no-one had particular concern because the debate about what constitutes party-political advertising and what constitutes government advertising was raging at the time—was not adopted. That raging debate has continued, but what we do not have is a clear answer from the government. In fact, we have silence from the government, or a refusal to answer.

The $12½ million spent so far covers about 10 programs. By the end of this financial year we expect that there will be programs covering 22 different promotional activities that the country needs to know about. What we would like to know is: what, why, who, how and the environment in which that is being promoted. If we could agree that we are living in a period that is pre-election—I think that is something that everybody in this place could agree on—we could then see the environment in which the information is being shared. Once that is agreed, we can work forward to see exactly how the expenditure of funds is done, how the imagery is done, how the press is used and how the message is put out. We do not
think that is too much to ask of the government. It certainly was not too much for the Prime Minister to ask when he was Leader of the Opposition. We think it is an entirely appropriate thing to see how over $100 million of our money is being spent.

It is very simple, probably too simple, to actually do a clear translation to what that amount of money could buy in the community, and we have seen that in other places where you take an amount of money and you translate that to the number of bulk-billing services, nurses and teachers we can pay for. We have all been there. I think that shows that the community are more aware—that they are asking those questions and that they have an expectation of government that, when it is making a statement which is allegedly about clear information, questions are asked about the motivation, the cost and the direction and that it is not good enough for those questions to be dismissed. I think that, through the process we have here, it is appropriate that we continue to ask those questions and not just through another audit report, because we have seen the impact that audit reports have: four years ago an audit report asked this question and nothing has occurred.

We would actually like to have a more open discussion about exactly what is going to happen, linking it to the expenditure, linking it to the programs and linking it to exactly where we are going. We are trying again: today in this place a motion was passed to send a reference to the Finance and Public Administration References Committee. The committee will start to meet very soon, and that is appropriate because the issue is being raised exactly when this expenditure is occurring and not after the event. The committee will look specifically at the level of expenditure on and the nature and the extent of government advertising since 1996 and whether there is a major difference between the period around elections and the period when no election has been called.

It is no surprise for people to see that there is a spike of advertising leading up to elections—that is what happens—but we need to have an understanding amongst all parties of the clear difference between appropriate information sharing and blatant advertising of a political process. We heard questions asked today in the House of Representatives about the recent Medicare expenditure—and I have mentioned the much valued Medicare booklet which I have treasured and kept in my home—but we need to have some real understanding of exactly where the next round is going to go, how the next round of expenditure is going to be used and whether there is going to be an even greater spike leading into whenever the election is going to take place.

It is a hope that this can be handled in a completely bipartisan way, that there can be an understanding that we should work together on this process and that there should be this time, in the year 2004, some focus on what happens next rather than protestations that everything is fine, that people are exaggerating and, worse than that, that it is fine for this activity to happen now because it happened when a previous party were in government—behaviour that was clearly questionable in previous years. If that behaviour was questionable then, if that expenditure was inappropriate, if there was a feeling that the people of Australia were not getting a fair deal with whatever advertising campaigns were happening in 1995 and the record proves that at least the Liberal Leader of the Opposition had that belief, then it must be inappropriate now if there is an undue amount of advertising which is not purely information.

There cannot be different rules. There must be some understanding that there
should be a process. When we are looking at the appropriation bills for 2004 and we are looking at expenditure, having trailed through the documents to find how much money is in the public relations component of each transaction, we need to ask exactly the same questions that the people in 2000 said should be asked: what, who, why, what is it meant to do and in what environment is it being produced? That is not too much to ask. It is a clear duty of the people in this place to ask the questions; but, more than that, it is a right of the electors, who are receiving the information in their mailboxes and on their TV sets and radios, to know how the money is being spent and to be able to ask questions about whether they are getting real value for their money and whether there is honesty in the advertising process that we have. That is our expectation for all parties, and we must have it.

Senator ABETZ (Tasmania—Special Minister of State) (9.12 p.m.)—I thank honourable senators for their contributions to the appropriation bills debate, and I am pleased to be able to close this debate. In doing so, I note that the bills propose expenditure of $50.4 billion. The bills reflect the government’s broad objective to maintain a strong economy and, together with the broader budget, they provide for a range of initiatives that look to the future in boosting innovation, funding new infrastructure and addressing demographic challenges, including the ageing population. Some of these initiatives include the largest ever package of measures aimed at assisting working families who are bringing up children; measures to boost retirement savings, including enhancements to the co-contribution scheme worth $2.1 billion; funding for carers as well as investments to ensure that the aged care sector is able to provide affordable and quality services to the increasing number of older Australians; substantial investments in science and innovation and in the road and rail infrastructure that is critical to a growing economy; initiatives for diabetics and the hearing impaired; a focus on Indigenous health; additional subsidised medicines and significant rural health initiatives; and additional funding to improve our national security arrangements and enhance our defence capabilities and preparedness.

The package of five appropriation bills also includes two supplementary additional estimates bills, which propose expenditure of $787.1 million for important initiatives that can be accommodated this financial year. More than half of the funding in the supplementary additional estimates bills is for a grant payment to the Australian Rail Track Corporation for investment in new rail and infrastructure projects on the interstate railway system. The significant expenditure proposed in the package of bills and the initiatives in the broader budget are possible only because of the government’s continued strong management of the economy. The government has accumulated $31 billion in surpluses over its six budgets since 1997-98. This budget forecasts a further cash surplus of $2.4 billion in 2004-05.

The government is also continuing to reduce the burden of debt. As at the release of the budget, net debt is forecast to continue to fall in 2004-05 to around $24.7 billion. It should be remembered that when we came into government there was debt of $93 billion and an operating deficit of $10.3 billion, which the Labor Party told the Australian people was a budget in surplus. When you have a turnaround like that in an eight-year period, the spending initiatives announced in the budget, the social dividends we can return to the Australian people, are the result of hard work and sound economic management. These things have not happened by accident. The Asian economic situation, the US depression et cetera all worked against us, but
despite that the Australian economy remains resilient and strong and we have now been able to pay off the vast bulk of Labor’s debt. The three budget bills for 2004-05 and the two supplementary additional estimates bills for 2003-04 are important pieces of legislation underpinning the government’s policies.

People listening to this debate tonight may well be thinking, ‘What are they debating?’ It is a tradition in this place that the appropriation bills debate entitles senators to cover a wide range of issues. Of course those opposite studiously avoided the actual details of the bills before them. Why? Because they know that the sound economic management of this government will never be matched by them. Just look at their record. No matter where they are, those who are the current leadership group, like Senator John Faulkner in this place, were the senior cabinet ministers who told the Australian people there was a budgeting surplus when in fact it was $10.3 billion in deficit. Look at the Leader of the Opposition in the other place. Sure, we cannot pin on him the federal profligacy of the years until 1996, but he has got the same record from the time he was mayor of Liverpool council. That council was going well until his big spending budgets put it into debt. That council is still grappling with the economic vandalism of Mr Mark Latham, just as we as a government have had to deal with the economic vandalism of previous Labor administrations. That is why those senators opposite failed to talk about issues such as economic management during this debate. They failed to talk about the wonderful initiatives and the social dividends that we as a government have been able to return to the Australian people. Instead, in a most hypocritical fashion, they sought to engage on the issue of government information campaigns.

I understand the Democrats have moved an amendment to these bills that seeks to do two things. It seeks to apply an unrealistic immediate disclosure requirement on all advertising and to enforce the proposed unworkable Australian National Audit Office guidelines on federal government communications campaigns. First of all, I want to deal with the disclosure requirements. As has been stated in this place previously, these requirements represent an outrageous imposition on the executive by the legislature. The Senate motion also requires that a statement be tabled. When does it need to be tabled? This motion first came before the Senate in 2003. Back then the ALP and the Democrats were calling for tabling within five days; now it is undetermined. Let us assume the opposition still wants five days. No other government decision requires the executive to report back on all of a sudden is any information campaign worth more than $100,000. Why would they pick on something like that? This is opportunism at its absolute worst and indicative of the fact that Labor cannot engage this government on economic management and our vision for the future, so they delve into these sorts of issues.

This government operates under exactly the same guidelines that were put in place in 1995 by Mr Paul Keating. As I recall, Mr Latham was a member of the parliament at that stage.

Senator Wong interjecting—

Senator ABETZ—He was elected in 1994 as I recollect. Senator Wong, I know it is unbelievable that he has been here for 10 years and has not learnt a thing. I agree with Senator Wong that it is surprising. But Mr Latham did not object to those guidelines. Neither did a single senator sitting opposite.
Notably, the Labor governments in New South Wales and Victoria issued new guidelines for their advertising in virtually identical terms.

In effect, what they are doing is seeking to score cheap political points off the government, but I do not think they have quite realised that, in doing so, they are impugning the integrity of Senator Faulkner, Senator Ray, Mr Latham and all those who were in the parliament at the time that they agreed to the Labor conditions, protocols and guidelines in relation to government communications campaigns. There is no accountability argument to justify this amendment. Any senator may obtain detailed costings of all campaigns at each estimates from the Department of the Prime Minister and Cabinet. You can see the results by simply reading the Hansard of the Senate Finance and Public Administration Legislation Committee estimates. Unfortunately, Senator Faulkner cannot count.

I take the opportunity of this debate to expose another Labor blooper. Sure, it is not the $8 billion superannuation ‘super blooper’, as it is known, or the $3 billion child-care blooper, but it is a $30 million blooper. Senator Faulkner put out a press release which claimed, falsely, that the government will be spending $122 million this year on advertising, excluding Defence Force recruitment. That is simply wrong. Why he would do it, I do not know. But it falls into the pattern of Senator Faulkner and his colleagues saying, back in 1996, that the budget was in surplus when it was in fact $10.3 billion in deficit. It falls into the same category as Mr Latham’s announcement of a child-care policy with a $3 billion black hole. The only good thing about this one is that there are a couple of zeros fewer in the mistake.

In relation to the super co-contribution, Mr Latham overestimated the campaign by $6.7 million. Why? I do not know. More Help for Families was overestimated by $8 million. The keeping the system fair package was overestimated by $13 million. The regional communications package was overestimated by $2.4 million. That is a total of $30.1 million. Where he got the figures from I do not know. I trust that he will justify them and apologise. But, even when Senator Faulkner in this place defames dead people like the Baillieu family, he does not have the good grace to come in here and apologise, so undoubtedly he will not have the good grace to come in here and apologise for this $30 million mistake.

I turn to the amendment moved by Senator Murray that the suggestion of the Auditor-General ought to be taken up. Let us analyse that. Interestingly enough, Mr Acting Deputy President, you would recall that the Auditor-General’s premises are in Centenary House—the biggest rental rort rip-off ever undertaken in this country by a Labor government for the benefit of the Australian Labor Party. At the end of the lease the Australian people will have funded an extra $36 million above and beyond market value to the Australian Labor Party. The suggestion of the Auditor-General is that any advertising campaign material should not be liable to misrepresentation. My goodness, when you have people sitting opposite who can tell you with a straight face that the budget is in surplus when it is in fact $10.3 billion in deficit there is a gross misrepresentation.

What does the Auditor-General say about that in relation to the practical outplaying of
something of this nature, such as government communications? We had it as well with the Pharmaceutical Benefits Scheme. For 25 months the Labor Party wrote letters to the editor and issued press statements and newsletters condemning our proposal for the Pharmaceutical Benefits Scheme. For 25 months they misrepresented the position. Now all of a sudden they have done a backflip. All of a sudden it is okay. When we are confronted with the masters of misrepresentation—the misrepresentation-meisters—of the ALP, are we supposed to say that we cannot engage in any government communications, because those opposite are liable to misrepresent them as party political?

Make no mistake about this. When we have a campaign encouraging people to stop tobacco smoking, when we encourage people to be concerned and report and change behaviours in relation to domestic violence, when we run campaigns tough on drugs and when we encourage Australian residents who are entitled to citizenship to become citizens, guess what—the Australian Labor Party continually misrepresents those campaigns as being party political. Indeed, they have continually included Defence Force recruitment in their figures. If you had a pacifist in this place, they could assert that Defence Force recruitment is political because they are pacifists and they oppose anybody joining the defence forces. Similarly, I could imagine extreme libertarians saying that it is no business of government to try to tell people to stop smoking. So, with great respect to the Auditor-General, the proposal is unworkable. Indeed, they have continually included Defence Force recruitment in their figures. If you had a pacifist in this place, they could assert that Defence Force recruitment is political because they are pacifists and they oppose anybody joining the defence forces. Similarly, I could imagine extreme libertarians saying that it is no business of government to try to tell people to stop smoking. So, with great respect to the Auditor-General, the proposal is unworkable.

Let us deal with this absolute furphy and misrepresentation of the Australian Labor Party in relation to the amount of expenditure. In 1995, the Australian Labor government at the time spent $78 million in advertising. In today’s terms that is roughly $98 million. It is less than what we spent last year or in 2002 in a market where advertising costs have gone up above and beyond the rate of inflation. We are in fact spending less than the previous government did. Most people recognise that the days of the town crier communicating government initiatives are gone. In a modern era you use modern communications.

In case the Australian people or the Australian Democrats perchance think that Labor do not believe in government communication, Labor have not indicated which programs they would cut be it smoking, domestic violence, citizenship or Tough on Drugs. You name them and they say, ‘They’re all good.’ In principle they are somehow against government advertising yet they will not identify which programs or campaigns they would cut. Most interestingly, they have identified the programs they would institute above and beyond ours: five of them to date—three of them completely uncosted as is the wont of Labor, and that should not be a surprise.

They would advertise their retirement income system policy, uncosted; superannuation for women, uncosted; and a mentoring campaign, uncosted. They would have a $2.5 million active life campaign. That is in their policy yet they have the audacity to get up at question time and suggest that the government should not be involved in an anti-obesity campaign. In their own documentation if they were to win government they would be doing exactly what they are suggesting we might be embarking upon. They would also have the $2.5 million healthy eating campaign.

I refer honourable senators opposite to 20 October 1986 Hansard where the then minister, Mr John Brown, asked the opposition what programs they were objecting to.
He raised exactly the same ones I have raised today: drug abuse, consumer awareness, defence recruitment, assistance for rural areas and apprenticeships. The amendment that is moved is unworkable. It is a stunt. The Labor Party have used the time of this debate to try to sidetrack the attention of the Australian people from the fantastic economic management that is being delivered by the Howard-Costello team to the Australian economy which is now paying huge social dividends. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

Ordered that consideration of these bills in Committee of the Whole be made an order of the day for the next day of sitting.

SEX DISCRIMINATION AMENDMENT (TEACHING PROFESSION) BILL 2004

Second Reading

Debate resumed from 12 May, on motion by Senator Abetz:

That this bill be now read a second time.

Senator WONG (South Australia) (9.33 p.m.)—I seek leave to incorporate Senator McLucas’s speech on the Sex Discrimination Amendment (Teaching Profession) Bill 2004.

Leave granted.

Senator McLucas (Queensland) (9.33 p.m.)—The incorporated read as follows—

I stand as a former primary school teacher in this place to oppose this Bill.

Labor understands that working toward a more balanced gender representation exists within the profession and within Australian schools is important.

However, we also recognise that this so-called crisis of masculinity in our schools is not new.

The issue is not only important; it is complex and therefore must be tackled in innovative ways.

And yet what we have before us from this Government is a simplistic attempt at a ‘quick fix’ that regrettably for most Australians also represents a backward-looking, discriminatory approach.

What this Bill sets out is a new exemption to the Sex Discrimination Act to enable student scholarships to be disproportionately awarded to men with the intention of rectifying the imbalance between numbers of male and female school teachers and further, to enhance the educational experience of male students.

Let’s be clear Senators. This is a most inelegant legislative approach that contradicts the very core of the statutory intention of the Sex Discrimination Act as a key plank of Australia’s legislative human rights and equal opportunity framework.

Let us not forget that the Howard Government has a track record in imposing its ideologically driven ‘values’ on our community generally and our schools in particular. The Budget is a prime example. Schools will get more funding but only if they sign up to the conduct of ‘values’ seminars and the implementation of national performance standards both of which the teaching profession has been quite rightly sceptical for many years.

Schools do have values. And I saw that recently when I hosted the visit of Jenny Macklin our Shadow Education and Training Minister to Townsville. We were joined by Anita Phillips, Labor’s candidate for Herbert on a visit to Heatley Secondary College. The college has it’s own views about values and it broadcasted these loud and clear on the school billboard on the day of our visit. The notice read: “Prime Minister. We have Values. All Schools Do. We have achievers. Citizenship a priority.” Heatley Secondary College is a great school and has developed a range of innovative new programs that are nothing short of inspirational and yet the Howard Government is going to force them to sign up for something they don’t need.

And now we, in this place, are being asked to implement this Amendment to the Sex D Act, which in effect will entrench structural discrimination.

Senators, we know the evidence on which the government has based this Bill is flimsy. We know this because in the interests of a more in-depth understanding of this issue, the Bill was referred to a Committee and the evidence given to
the Committee makes for interesting reading indeed.

And, it was on the basis of that evidence that Labor and the minor parties provided a dissenting report to the Government’s majority report.

Senators, there was no evidence provided to the Committee to show that increasing the number of male teachers or role models enhances boys’ educational outcomes.

Government Senators stand in this place dramatically putting this issue forward as a new and urgent issue. Their simplistic diatribe puts a sympathetic face on a government not renowned for its sympathetic treatment of education generally.

Headlines like “The Trouble With Boys”, “Role Models for Boys a Primary Need” or “Don’t blame the boys, blame the system” guarantee sensational copy and even better politics in a community worried about social dislocation and disturbance as a result of this government’s policies.

The thrust of this government’s whole approach to education reform is to characterise problems with the system as stemming from left-wing ideology running rampant within government schools, administered by Labor States, hell bent on creating a moral values vacuum.

Nothing could be further from the truth. Right around Australia teachers have to do more with less funding and cope with the new pressures of societal and family disruption that all too often spill over into the classroom.

Incredibly given the Federal funding squeeze they are, in the main, doing a great job. And, long has this been the case.

We’ve seen this gender disparity for many years in our schools, particularly our primary schools.

When I began my teacher training in 1976 I recall there were three intakes to make up the approx 100 first year trainees. Each of the first two intakes had a similar gender split but the third was disproportionately skewed to accept far more male applicants.

The folklore—never acknowledged by the Administration, was that when they got to the last band, selection was based on gender. The reason I tell this story is the fact that completion rates of these young men were much, much lower than any of the other trainees—men or women. And that is the lesson to be learned. These young men struggled with learning and were not actually interested in becoming teachers. They were accepted for the wrong reasons and the outcome was very predictable.

As a former teacher, as a parent, as one who believes that receiving a quality education is a significant indicator of one’s ability to achieve one’s potential, I say we want teachers of the highest possible quality who want to teach!

In fact, this government’s approach is disturbingly similar to a teaching era that ended before mine began in the late 1960’s and early 70’s. Again, women teachers were in the vast majority in classrooms and in primary schools they were usually working to the rule of male headmasters.

In that era, there was also concern to make room for male teachers in the name of so-called balance.

What happened then was that women were simply sacked when they got married.

One prominent teacher in Queensland was in fact sacked three times. When she got married, her desire to teach and incredible talents in the classroom were wasted as she had to find work as a clerk. Then, when there was a teacher shortage, the State deigned to have her back but falling pregnant soon after, she was quickly sacked once more and then again on the birth of her second child. It was the abject failure of the Bjelke-Petersen Government’s discriminatory favouritism of male teachers that allowed her to return to the classroom. This time she was engaged as an unqualified high school teacher as the impact of another teacher shortage left the Government with no alternative but to accept married mothers back into the ranks of the teaching profession.

My point is that using statute to make room for men did not work thirty to forty years ago and it will not work today. What sort of message does it send to teachers now, or to young men and women who might wish to become teachers in future? What message does it send to women who lived through that era of officially sanctioned discrimination? What they are saying is that they want the teaching profession to move back there!
I mentioned in my opening remarks that this amendment contradicts the very nature of the Sex Discrimination Act and leaves the door open for a whole raft of future exemptions. If passed it will set a dangerous precedent and represents a fundamental change in approach that given the background to this issue demonstrates this Bill is both ill-conceived and irrational.

In August 2002, the Catholic Education Office in Sydney applied for an exemption under S. 44 of the Sex Discrimination Act in order to offer 12 teacher training scholarships to male HSC students. This application was declined a few months later but rather than let the appeal process at the AAT take its normal course, this government pre-empted that by introducing an amendment to the Sex Discrimination Act.

Did the Catholic Education Office at any stage ask for such an amendment? They did not. Neither are these changes are supported by Sex Discrimination Commissioner Pru Goward who made her reservations and alternative options available to government quite clear in her very comprehensive correspondence to the Committee Chair only a few days ago on 7 May.

So why has the government taken such extreme action in amending the SDA? Was the Attorney General overwhelmed by complaints and demands from teachers, parents and community groups? No.

It is quite clear we are here today debating an initiative put forward by the Minister Education to divert attention from this government’s lack of action on the issue of boys’ education and to enable ideological attack to continue on those from the sector and the community who would naturally oppose this measure.

Of the 17 submissions received by the Senate Inquiry and 7 organisations that appeared to give evidence, the overwhelming majority stated that the lack of males is teaching is in fact driven by the community standing (or lack of standing) of the profession, wage levels and career opportunities.

Like the findings of the 2003 House of Representatives Inquiry “Boys: Getting it Right”, most of the evidence heard by Senators suggested that it is the quality of teaching and resources rather than teacher gender that has the most profound impact on learning outcomes for boys and girls alike.

The “Boys: Getting it Right” Report did not recommend changes to the Sex Discrimination Act and yet the Government refers to this report as part of its rationale for this Bill!

Anyone closely following this debate, and women and members of the teaching profession are doing just that, know that the Government is simply playing politics with our classrooms.

I was happy to learn that the Sydney Catholic Education Office issue has been sensibly resolved thus providing a rationale for the government to simply withdraw this flawed legislation.

From the very outset of this debate, Labor has been calling on the Government to do just that—withdraw the Bill. But rather than adopting a sensible policy approach, the Government is now pushing for its own package of male-only teacher scholarships.

This is extraordinary and absolutely unnecessary given that 2300 men who applied for university teaching places this year were knocked back because places were just not available.

Labor takes a commonsense approach to the complex issue of boys’ education and getting more men into the teaching profession. Labor will make more tertiary places available and we will conduct a National campaign for attracting quality entrants to teaching, targeting men with relevant skills and backgrounds.

Then there’s our mentoring program which will involve fathers and other men of good character to become role models by inviting them into schools to read to students, to use technology, in vocational education, music and drama, and sporting activities.

These measures, when combined with student discipline and welfare programs targeted at boys, incentives for quality teaching, and targeting improvements in teaching skills for boys make for a comprehensive policy mix.

Recently in Cairns, Jenny Macklin joined Labor’s candidate for Leichhardt, Jim Turnour at the White Rock Primary School to announce further details of our proposed campaign to target boys in
years 10, 11 and 12 and in university to promote the benefits of becoming teachers. She also outlined how our new Buddy Up program, which is a mentoring plan to give primary aged boys contact with men who can act as role models and mentors, will form part of Labor’s National Mentoring Plan. These are terrific initiatives that Labor will fund that work on a number of levels. They will have long-lasting and practical outcomes for boys and represent a coherent strategic approach substantiated by research and the evidence witnesses have put before Senators at the Inquiry. This Bill’s expressed purpose of attracting more males to teaching is commendable. However, Labor fundamentally objects to the Howard Government’s thoughtless and discriminatory means of achieving this outcome and I again call for this unsupportable Bill to be withdrawn.

Senator WONG (South Australia) (9.34 p.m.)—I rise tonight to speak on the Sex Discrimination Amendment (Teaching Profession) Bill 2004. I will briefly refer to the principles which underlie the legislation that this government is seeking to amend. The Sex Discrimination Act entrenches a very important principle in our Commonwealth law—that is, that people ought not be discriminated against on the basis of their sex. It is a reasonably simple proposition. One would have thought this is a proposition that has reasonably wide acceptance in the Australian community.

It is the case that this Prime Minister is one of the members of parliament in this place who has a history of opposition to antidiscrimination legislation. He has been consistently antagonistic towards the Human Rights and Equal Opportunity Commission. In 1993, he stated:

... I am a profound sceptic of the value to our society of the Human Rights Commission.

I am sure there are many people in this country, particularly those from groups who have been the target of discrimination or preju-
profession? There is no evidence of that. There is no evidence of discrimination.

I can tell you where in the teaching profession there is evidence of discrimination—frankly, it is in management positions within schools. If you look at the figures of the proportion of male teachers in Australia and the proportion of male principals, you will see quite clearly that men are disproportionately represented in management positions given their membership of the profession. Around 70 per cent of teachers in Australia are female, but the same proportion of senior school positions are held by men—70 per cent of principals are men, on the AEU’s estimation. In Victoria in 2001, 68.2 per cent of government school teachers were women but only 42.2 per cent of principals were women.

If you look at who was applying for the principal jobs, you may well see that quite a few women applied but did not get up. But what you do not see in the teaching profession are massive numbers of young men seeking to become teachers but who cannot get there because someone is discriminating against them. It is as simple as that. So why would you proceed on the basis that you should amend an act which seeks to remove, prevent or redress discrimination in Australia when there is no evidence of discrimination—and I will talk a bit about why that stated objective is really not achievable by the sort of legislation that is being put up. The government’s credibility on this issue, given their lack of funding for a whole range of measures which could address this issue, is very problematic.

It is interesting to look at what this Prime Minister and this government choose to act on when it comes to there being more women than men or more men than women in a variety of professions. I have talked about school principals. You do not see any legislation before the Senate or any public campaign by the government trying to get women into management positions. You could equally argue that it is a reasonable position that both young women and young men ought to engage with women in positions of authority and not just as carers or primary schoolteachers, but that is not an issue that you campaign on. There are very few men in the nursing profession. That is not an issue you choose to campaign on.

Senator Abetz—It’s about the children being taught.

Senator WONG—The minister interjects and says it is about the children. I agree. The most important thing in education is the outcomes for children. There is nothing in this legislation which will improve the outcomes
for children. I can tell you what would improve the outcomes for children: you funding public education in this country reasonably. The most likely indicator of a child’s outcomes in this world—

**Senator Abetz**—Stop being an apologist for the states.

**Senator Wong**—I am not an apologist. The most likely indicator of positive outcomes for children in this country is their social economic status. My colleague in the other place the member for Jagajaga made a speech—I think it was last year—entitled ‘Postcodes for prosperity’ which makes for very frightening reading, as do some of the NATSEM analyses on this issue. These reports show that a very strong indicator of the outcomes of a child’s life is where they are born.

If you want to talk, Minister, about outcomes for children and if you want to be serious about improving outcomes for children, perhaps you should do something about funding those schools who teach children in the most needy communities, children in the poorest communities, children in communities with the least cultural, social and economic capital—and that is our public education system. The hypocrisy of this government—which seeks to place a disproportionate amount of Commonwealth funding in wealthy private schools and not fund appropriately the poorest schools in our country and the public education system—in coming in here and saying this legislation has to be passed because of outcomes for children, really is astonishing.

Going back to the bill that is before the Senate, I think it is interesting to note what the Minister for Education, Science and Training himself said in a press conference about the government’s trumpeted announcement of this as part of its broader package. He was asked:

Is there anything in this package, Dr Nelson, to encourage more male teachers into the system? He replied:

... there is nothing specific in this package for the encouragement of men into teaching itself.

So let us go through some of the evidence surrounding this legislation. There are two issues associated with this bill: first, encouraging more men into teaching and, second, addressing the educational needs of boys. In addressing the needs of boys, those on this side of the chamber recognise something the Howard government does not appear to be able to address—many of the boys who are struggling at school are located in areas of serious concentration of social and economic disadvantage. As I said before, the member for Jagajaga has explored this matter extensively. I refer honourable members to her speech, ‘Postcodes for prosperity’, which clearly establishes that, in areas where incomes are higher—in affluent areas where opportunities are greater—boys’ school retention rates are higher and school marks are higher. Conversely, in areas of low socio-economic status boys retention rates are lower and school marks are lower. For all of its rhetoric about caring about the education of boys, what the Howard government is doing by giving a disproportionate amount of Commonwealth funding to the wealthy, non-government schools is actually making the problem of the underperformance of boys in our education system worse. If it were serious about the education of our children—which we know it is not—it would be addressing these disparities.

I want to briefly refer to the House of Representatives Standing Committee on Education and Training inquiry into the education of boys and its report, *Boys: getting it right*. I make the point that the government rejected the recommendation that the Commonwealth should:
... provide a substantial number of HECS-free scholarships for equal numbers of males and females to undertake teacher training.

That was a recommendation of the committee. The government rejected that and then introduced legislation because it considered it politically convenient to try, I think, to wedge the Labor Party on the issue of the Sex Discrimination Act.

The Senate Legal and Constitutional Legislation Committee’s report into this bill is also instructive. According to the evidence received by that committee, it appears there is no structural discrimination against males entering or remaining in the teaching profession. So we are wanting to amend the Sex Discrimination Act in circumstances where there is no evidence that men are being discriminated against. The committee report also noted that there is neither an apparent correlation between increasing the number of male teachers and the educational outcomes for boys nor a relationship between the perceived lack of role models for boys in schools and associated behavioural issues and educational outcomes. As I said at the outset, under this legislation there is the capacity for special measures to be entered into for the purposes of redressing discrimination or imbalance.

We say this bill is a simplistic and ineffective approach to a complex policy issue. There is no evidence that increasing the number of male teachers itself will enhance educational outcomes for boys. In fact the evidence suggests that the lack of males in teaching is caused by factors such as perceived status, salary and career opportunities. These are not matters that the government is addressing. Instead it bows up with this amendment to the Sex Discrimination Act. Referring to the Labor senators’ dissenting report from the Senate Legal and Constitutional Legislation Committee inquiry on this bill, the evidence also suggests:

... it is the quality of teaching and learning provision and not teacher gender that has the most profound impact on educational outcomes for both boys and girls.

That is fairly clear. I will refer to Dr Ken Rowe, Research Director with the Australian Council for Educational Research. He said:

We would like to see a gender balance because increasingly there are single parent families and kids not being exposed to male role models, but that has got nothing to do with their outcomes at school.

Perhaps, therefore, the government would be far better off adopting Labor’s policies of creating more teaching places rather than proceeding with this legislation. Labor have committed to funding an extra 4,600 new full- and part-time teaching places. This will start with 1,700 new places each year from 2005. The total cost of that is $57.4 million. We have also committed to funding 500 additional new HECS funded postgraduate teaching places in areas of specialisation and professional development from 2005 at a cost of $17.9 million over four years. We have also committed to providing additional moneys—some $86 million over four years—to increase the quality of teacher education, including meeting the cost of in-school teaching practicals.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Brandis)—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.

Christian Schools Tasmania

Senator ABETZ (Tasmania—Special Minister of State) (9.50 p.m.)—On 23 July this year, Christian Schools Tasmania celebrates its jubilee—its 50th anniversary. On 23 July 1954 the very first Christian Parent-Controlled School Association in Australia was established in my hometown of King-
ston, Tasmania, in the local scout hall. The association was begun by 41 members who, guided by their Christian faith, established the Association for Christian Parent-Controlled Schools of Kingston and Hobart. They were united by their Christian faith and strong conviction that their children’s education should be Christ-centred.

The inaugural members were not only pioneers in the field of Christian parent controlled schools but also a group of Dutch immigrants who had left their homeland after the horrors of World War II. They were people committed to their faith, family, hard work and sacrificial giving. In short they contributed to the values and wealth of our nation. They were in every respect solid citizens. Two years after its humble beginning, the association bought a block of land for the sum of £675. Eight years after its inception, the association’s first school, Calvin Christian School, opened with 77 children ranging from grades 1 to 6. It employed three teachers under the guidance and wisdom of the first principal, Mr O.J. Hofman. The school buildings were built by volunteers, and the items that needed to be bought were bought through generosity and sacrificial giving.

The inaugural chairman, Mr Murk Van Driezum and his wife, Janny, are a case in point. They pledged to give £1 per week to the school and £1 per week to their church. In today’s terms that might not sound like much, but the two contributions represented half the Van Driezum’s weekly income. On top of that, every Saturday was set aside for voluntary work to help build the school. If that was not enough, even more was contributed of an evening. Mr Van Driezum, a talented tradesman, would make furniture for the classrooms. Mr Overeem undertook the metalwork for the desks and Mr Betlehem made the window frames, to select just a few contributors. On top of all that, Mrs Van Driezum, with eight children, would make Borstplaat, a Dutch confectionary, which the children would then sell on the streets to help with fundraising.

Mr Van Driezum tells of meetings with the treasurer, Mr Sierink, who would lament the lack of financial capacity to pay the teachers, but through God’s providence they always were paid. From this tough and humble beginning the association has been blessed to be in a position where today it is thankful for 327 members, covering a more diverse group than its founders, with 123 employed staff and 903 enrolled students from K to grade 12 spread over five campuses.

Fifty years on, the association has been blessed and grown beyond what I imagine the pioneers thought humanly possible. The history of the association is worth recounting, because it celebrates the faith and vision of the founding fathers of the school and its growth over 50 years. The pioneers of Calvin Christian School were the trailblazers who helped spawn the Christian Parent Controlled School movement around Australia. Their success and reputation helped foster the now 90 Christian parent controlled schools that we have in Australia, teaching some 22,000 students.

I also recognise the generations of past volunteers and today’s generation of volunteers for their efforts as board members, who give hours and hours of their time each week in meetings; those who help volunteer for ground maintenance; those who give their professional services; and those who serve at canteens or uniform shops. All these people have made a difference and still do today. They set a great example of community service and volunteering, and provide the children and the school community with valuable ethics and an example of faith in action. The inaugural association started before the days of government funding. The association
had to deal with the divisive campaign of DOGS, the Defence of Government Schools.

As the inaugural president, Mr Van Driezum, said in a recent interview:
We believed that, as we were paying taxes, we should be entitled to funds for our schools. It was a major break through when, finally, we started receiving some Government funding!

Let me put on record that I served for a short period on the board as deputy chairman. My wife serves in the uniform shop and yes, I do my voluntary labour on a Saturday as well from time to time. We also have two children attending Calvin Christian School. I recognise as a parent that my children’s education is enhanced by the generosity, sacrifices and contributions made by previous generations.

Let me turn to the divisive and dishonest campaign currently being run by the Australian Education Union. I am delighted that I have been part of a government that abolished Labor’s anti new schools policy for the non-state sector. I am also pleased that I am part of a government that unapologetically funds both state and non-state schools.

Let me remind honourable senators and the community of the fact that there are thousands of mums and dads of the over one million students attending non-state schools who contribute between $3 billion and $4 billion dollars from their after tax dollars for the education of their children. If they did not make that personal sacrifice then the cost to state governments—and let there be no mistake, they are a state responsibility, which is why they are called ‘state schools’—would be prohibitively expensive.

I will put on the record some very important facts. There are 2.25 million students who attend state schools, and they receive $19.9 billion of public funding. There are 1.04 million students who attend non-state schools, and they receive a total of $6.2 billion. In other words, state schools enrol only 68 per cent of students, yet receive 76 per cent of funding; while the non-state sector enrols 32 per cent of students and receives only 24 per cent of total public funding.

Since the election of the Howard government in 1996 there has been an approximate 60 per cent increase in Commonwealth government funding for state schools. Over the same period the inflation rate has been about 20 per cent. There has been a massive increase in real terms of Australian government support for the state sector. The AEU and Labor are ideologically blinded to this indisputable fact. Unfortunately, the average state and territory government budget did not match this increase in funding. In my home state of Tasmania the state government only increased the education budget by 2.9 per cent in 2003, whereas the Howard government increased funding for Tasmanian state schools by 5.6 per cent. If our increases had been matched by the state Labor government, the Tasmanian state system would have an extra $14 million available to it this year.

The Australian government funds non-state schools according to a formula that means the socioeconomic status of the community they serve is taken into account. Schools which draw students from the neediest communities receive 70 per cent of the cost of educating a student in a state government school and the wealthiest communities receive only 13.7 per cent of that cost. I also point out that one in five families earning less than $20,800 per annum send their children to non-state schools—a very considerable sacrifice. I have pointed out all these figures to show the dishonesty of the campaign currently being run against the non-state school sector. Today’s school communities should not be penalised because of the blood, sweat and tears, the hard work and the dedication of the founding fathers of the various schools around the coun-
try who have built them into strong and viable educational institutions.

One of the privileges of this job is being able to put on public record my thanks to the Mr Van Driezums of this world. Knowing Mr Van Driezum as I do, he would undoubtedly shake his head and tell me that he was only one person doing his job and that there were many people working with him to achieve the outcomes and that, without God’s blessing, their labour would have been in vain. I conclude by saying that I thank God and I thank the pioneers, previous and current volunteers who have allowed this association to grow and spawn into what it is today.

Parliamentary Friends of Schizophrenia

Senator STEPHENS (New South Wales) (10.00 p.m.)—This evening I wish to speak about the Parliamentary Friends of Schizophrenia. Earlier today several of my parliamentary colleagues joined key advocacy groups, carers and researchers at the launch of the Parliamentary Friends of Schizophrenia. I take this opportunity to thank my 30 or so colleagues who are supporting this very important bipartisan initiative which will, I believe, help to improve awareness and greater understanding of schizophrenia among the policy makers here in Parliament House and in the broader community.

Today, in an excellent and insightful presentation, we were presented with perspectives about this complex disorder by Professor John McGrath from the Department of Psychiatry, University of Queensland, who also holds an adjunct position with the School of Biomolecular and Biomedical Sciences at Griffith University. As Professor McGrath informed us, schizophrenia is much more than a single illness. It is a group of illnesses affecting the most human characteristics of our abilities—that is, language, planning, emotion and perceptions.

It is relatively common, often becomes apparent in early adulthood and frequently results in prolonged disability. Available treatments, while effective for the majority of people with the illness, still leave many individuals with symptoms or with troublesome side effects. The economic costs of the illness to the individual, their carers and the community are enormous. It is estimated to be about two per cent of gross national product. Of course, the social and emotional costs are immeasurable. Schizophrenia affects one in a hundred people and more than a million Australians as it directly impacts on family and friends. It affects more men than women. The average age of the onset of this illness for men is only 19 and for women it is about 25 years.

Professor McGrath was joined at the launch today by Simon Champ. He is an artist, a pioneer of consumer advocacy, a member of the board of SANE Australia and a long-time sufferer of schizophrenia. Between them, Professor McGrath and Mr Champ communicated to the forum the effects and the costs of this illness going undiagnosed, untreated or unsupported.

Schizophrenia is regarded as the most severe of the mental illnesses and can affect all spheres of the sufferer’s life. One of the most compelling statistics is that between one-third and half of the people with schizophrenia will attempt suicide, and of those approximately 10 per cent will succeed. That rate of suicide is three times the national average.

There does not appear to be any single cause of schizophrenia but rather several contributing factors. From Professor McGrath’s collaborative research, we know that onset probably occurs as the result of an interaction between genetic and environmental influences. Family studies suggest that people have varying levels of inherited
Whether someone develops schizophrenia is determined in part by their vulnerability and in part by stresses that person experiences over time. As Professor McGrath suggested, an analogy can be drawn to diabetes by virtue of both the genetic factors—that is, the family history—and behavioural factors, such as diet, exercise and stress that interact to determine whether a given person develops diabetes. But there are some things that we know about schizophrenia. Firstly, if the environment is sufficiently stressful, even people with a high personal threshold for stress will develop some indicators of mental illness, including schizophrenia. Conversely, a less stressful environment may decrease the risk of onset of the disorder in a person with a predisposition to schizophrenia.

Secondly, some people experience only one schizophrenic episode, which, if diagnosed and treated, does not reoccur. Many others, however, become captive to this disorder for the rest of their lives. For those not yet touched by this illness, it is a difficult disease to comprehend. It is characterised by disturbances in a person’s thoughts, perceptions, emotions, behaviour and ultimately their personality. The most typical symptoms are visual and auditory hallucinations, thought disorder and delusions. Professor McGrath has described the illness as a ‘broken brain’.

Because schizophrenia is not a single illness but, as I said, a cluster of illnesses, many symptoms overlap. Every person living with schizophrenia will have an individual experience of the disease, and successful treatment for one person is not necessarily able to be replicated for another. Professor McGrath emphasised that early intervention is one of the best weapons. The problem is that is much more difficult to achieve than it sounds. Early intervention is not easy to achieve because it is very unlikely that the sufferer will have an understanding that they suffer from a broken brain. For example, Dr Fred Frese, Director of Psychology at Western Reserve Psychiatric Hospital in Ohio—and a person with schizophrenia—described how he felt when first confronted by his diagnosis:

Now, in my mind there’s nothing wrong with me, and that is so true in schizophrenia, because if you think about it, what is a delusion? A delusion is a false belief. It is false to other people, but to the person who comes down with the delusion, to them it’s a discovery. And if they knew it was false, it wouldn’t be a delusion would it?

And so inherently, one of the most important things to understand about these disorders is, that for the individual that has schizophrenia accompanied by delusions, as almost all of them are, having the disorder makes you incapable, at least initially, of understanding that you have the disorder.

People who have schizophrenia rely on those who care to help them get treatment and, having had the initial diagnosis and prescribed medication, to encourage them to continue to take their medication, even when they feel better. Neither of those things happen easily. There is often fierce opposition by the sufferer, causing greater anxiety and distress for carers and families. It is common for someone with schizophrenia to feel that they have been unjustly betrayed by the person trying to intervene.

This afternoon we heard how carers can be made to feel that what they are doing is cruel and that they have no right to be imposing their will on the sufferer. But this is tough love—if friends or family members do not insist on getting help, the sufferer is unlikely to get or maintain treatment themselves. Early intervention programs, such as those described by Professor McGrath, are providing encouraging outcomes for people with early psychosis. Other outcomes, such as empowerment and quality of life, are be-
ing increasingly recognised as important features of ongoing treatment.

Until the 1990s most medications had horrible side effects. It was quite easy for many sufferers to take the decision that the treatment was worse than the illness. To the great relief of sufferers and their families, there have been some new and dramatic advances made with medication. These include the development of atypical or new generation medications that have the ability to treat both the active and passive symptoms of the illness. Older drugs tended to treat only the active symptoms and possibly make the passive ones worse. An injectable form of this new style of medication will be considered by the Pharmaceutical Benefits Advisory Committee on 7 July. I am told that its listing would be a great step forward for Australians with the disease. An oral form has been available for a while, but this is problematic for those with the most serious form of the illness. The injectable form is given to the sufferer once every two weeks and offers hope to those who lack insight into their disease or who resist treatment.

These kinds of treatments give new hope that this medication will give a greater possibility of stabilising the sufferer, allowing greater recovery and re-engagement with the community and the work force. We heard of exciting possible areas of research from Professor McGrath, with indications of new opportunities to unravel the mysteries of this disease. We also heard about the insensitivity of some government agencies and service providers to the particular needs and anxieties of schizophrenia sufferers. We heard about the high levels of homelessness, the poor health outcomes and the challenges to vocational rehabilitation.

Having a mental illness is not someone’s fault, it is not a sign of weakness and it is not something to be ashamed of. I encourage honourable senators and members to join the Parliamentary Friends of Schizophrenia, chaired jointly by Dr Andrew Southcott, the member for Boothby, and me. We know that there are many people in this place who have personal experiences and have been touched by schizophrenia. We are determined to ensure that we have a sensitive national and long-term policy approach to this disease and to the challenges of mental illness, which, through the ongoing work of the Parliamentary Friends of Schizophrenia, will demonstrate that this is one of those important issues that are above politics and in the national interest.

**Foreign Affairs: Sudan**

Senator STOTT DESPOJA (South Australia) (10.10 p.m.)—I would like to take this opportunity this evening to put on the record my deepest concerns in relation to the massive humanitarian crisis unfolding in Sudan. It is a situation which has not featured greatly in the Australian mainstream media, unfortunately, and I suspect that there are many Australians who are still unaware of the problem. However, it has recently been described by a senior UN official as the worst humanitarian crisis in the world today. It is vital that the international community rallies together to bring an end to this crisis now rather than simply pursuing the perpetrators through the International Criminal Court in years to come. I put on the record my gratitude to the chamber for its support today of a motion that I moved in relation to this issue.

We recently remembered, of course, the 10th anniversary of the massacre in Rwanda—a massacre representing one of the most spectacular failures of the international community in recent times. Yet here we are with the opportunity perhaps to prevent a tragedy of similar proportions and, as the International Crisis Group has noted, the
international response thus far has been 'divided and ineffectual'. The current conflict broke out in February 2003 and has already claimed around 30,000 lives. In recent months it has continued to escalate to the extent that there are now 1.2 million displaced persons within Sudan and neighbouring Chad and two million affected by the conflict in Darfur. The origins of the conflict have been concisely summarised by the International Crisis Group as follows:

The current conflict in Darfur began when two loosely allied rebel groups—the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM)—attacked government military installations in early 2003. The roots causes for the insurgency include economic and political marginalisation, under-development, and a long-standing government policy of arming and supporting militias from Darfur's Arab nomadic tribes against the mainly African farming communities. The situation mirrors the dynamic of other conflicts throughout Sudan, pitting a periphery that views itself as the victim of discrimination against a centre in Khartoum that is seen as holding all the economic and political cards. Ironically, progress in the peace talks between the government and the country's main insurgency, the Sudan People's Liberation Movement/Army (SPLA) provided the immediate trigger since the Darfur groups feared they would have little leverage after a North/South deal was concluded.

Following a number of rebel group victories, the government sponsored Janjaweed militias commenced a campaign of what many have described as, and is, ethnic cleansing, targeting black African villages but sparing Arab ones. There is widespread evidence to show that the militias have committed summary executions and mass rape. They have destroyed water and food sources and burnt down villages, forcing many people to flee to neighbouring Chad. A report released this week by Human Rights Watch alleged that the Janjaweed militias are now launching assaults across the border into Chad, attacking Chadian villagers as well as refugees from Darfur and looting cattle. Human Rights Watch has documented at least seven incursions into Chad by the militias since June. The report argued:

The Sudanese government must take full responsibility for the militia raids into Chad. The Janjaweed is the government's militia, and Khartoum has armed and empowered it to conduct 'ethnic cleansing'.

While the Khartoum government has admitted backing the militias to fight the rebel groups, it is not accepting responsibility for their actions against civilians. In the face of growing condemnation, the government has indicated that it intends to 'neutralise' these militias. However, what this essentially means is grafting them onto the official police and security forces.

Earlier this year, on 8 April, a ceasefire agreement was signed between the Khartoum government and two rebel groups in Chad. However, that agreement has since been repeatedly violated and, I guess, has largely been ineffective. International efforts to provide humanitarian assistance to these people have been hindered by the obstructionism of the Khartoum government. The International Crisis Group estimates that humanitarian organisations have access to, at best, half of the displaced persons. The head of UNICEF, Carol Bellamy, recently returned from Darfur and reported that 'people are continuing to flee their villages, if not on the same large scale as in previous months'. She also expressed grave concerns regarding the lack of sufficient humanitarian aid, saying:

I seldom recall coming to a place with this expansion of internally displaced people, to see so little going on. There are almost no NGOs. I understand it's not their fault—it's hard to get in. We in the UN have to work with NGOs, so the limited number of partners is a real problem for us.

It must be acknowledged that there have been some improvements in access for humanitarian organisations in recent weeks.
The Sudanese government is now issuing visas within 48 hours and waiving the requirement for travel permits in relation to Darfur. However, it will still take some time for humanitarian organisations to build up their capacity to an adequate level on the ground. These impediments to access are now being exacerbated by the rainy season, which has the potential to hamper access to roads, hinder the delivery of aid and foster a breeding ground for infectious diseases, including diarrhoea, measles, meningitis and malaria.

Responding to the humanitarian crisis is the most urgent priority for the international community. But it will also need to achieve some kind of sustainable resolution to the ongoing conflict between the government and the rebel groups. Much of the criticism for the international community’s failure to avert this crisis has been directed at the United Nations. However, Secretary-General Kofi Annan recently responded to these criticisms by arguing that it is the member states which require the political will to act. Mr Annan made the point:

We should avoid the situations where we allow Member States to hide behind their Secretary-General [and] use him as an alibi for their own inaction.

The UN Under-Secretary for Humanitarian Affairs, Jan Edgeland, recently argued that it is time for the council to adopt a resolution showing it will maintain an aggressive stance on protecting civilians. Mr Edgeland pointed out that the council’s last resolution on the subject was issued four years ago. He argued:

We need to find better ways to provide humanitarian assistance quickly and efficiently, as soon as the security situation on the ground allows, whenever civilians are in desperate need.

The need for Security Council action has also been backed by the International Crisis Group, which in its report of 23 May 2004 recommended:

The UN Security Council should authorise planning for a military intervention in Darfur, focusing on the creation of a half dozen internationally protected concentrations of IDPs, the means to deliver assistance to those populations, and the means to protect those deliveries, if necessary, by force.

I should recognise the statement by the President of the Security Council on 24 May 2004 condemning the violation of human rights and international humanitarian law in Sudan and calling for the government of Sudan to allow full, unimpeded access by all humanitarian personnel.

I also take this opportunity to acknowledge the Australian government’s recent commitment of $8 million to meet the needs of persons displaced from Darfur. As I said earlier, I thank the Senate for its support of my motion on this issue today. However, I think we have to acknowledge that $8 million is a small step towards resolving the ongoing hostilities in the Sudan and providing humanitarian assistance to the millions of Sudanese people who have been affected by this conflict. More is required. I do not think anyone disputes that fact. I think we really face a race against time at the moment. We have literally many thousands of Sudanese lives hanging in the balance. I appeal to the government tonight: I urge the government to increase its assistance. As I say, I have acknowledged that $8 million has already been contributed, but when you are faced with what has been described as the worst humanitarian crisis at this time I hope that our government will see it in its heart and in its budget to provide further assistance.

Marriage Legislation

Senator BARNETT (Tasmania) (10.19 p.m.)—I stand tonight in this Senate to again defend the institution of marriage and to say that I am deeply disappointed with the events
of today. In my view, we should in this community and in this parliament be doing all that we can to undergird the institution of marriage, because it is an institution worthy of protection. Why is it that we need to debate it and, even now, as a result of today’s events, do we need to have a 14-week inquiry into the definition of marriage, and specifically the *Marriage Legislation Amendment Bill 2004*? I am gravely concerned and disappointed that this has occurred.

The legislation that was brought forward would have clarified and made it patently clear what is already patently clear in common law and commonly accepted in the community today—that marriage is defined as between a man and a woman. I believe that marriage is a bedrock institution worthy of protection, and I will do all that I can and in my power and persuasion to ensure that that institution is protected. It has endured for thousands of years and across countries, cultures and religions. It is a social institution which benefits family members and society, and it does provide for stability in society. It also provides a solidly-built roof under which children are nurtured, protected and raised. It specifically benefits the children and is designed to ensure their welfare is maximised. The Attorney-General, the Hon. Phillip Ruddock, in his second reading speech when introducing the legislation, said:

This bill is necessary because there is significant community concern about the possible erosion of the institution of marriage.

I will come to that point very shortly. He also said:

It is a central and fundamental institution. It is vital to the stability of our society and provides the best environment for the raising of children.

As I have said many times in this place and elsewhere, the current Marriage Act 1961 does not contain a definition of marriage, a most peculiar event indeed when you actually think about it. But quite clearly that definition ‘between a man and a woman’ has been accepted in common law in case after case and has been quite clearly accepted in the community.

The community concern about the possible erosion of the institution of marriage is significant for a range of reasons, and I would like to outline some of those. The most important, I think, is the fact that it has been widely reported and accepted that at least three Australian same-sex couples are trying to change the current law in Australia by travelling to an overseas jurisdiction such as Canada, the Netherlands, Belgium or Denmark to be married and then returning home to seek judicial recognition in Australia of their marriage. A notice of intent to do just that was made in February this year by a Melbourne couple, and I am advised that a Western Australian same-sex couple have registered their interest.

I am not sure exactly how far down the track those efforts are, but I am fully aware that every day that goes by is another day closer to litigation. Today’s events saw a motion passed in the Senate by just two votes—it was supported by the Labor Party, the Greens, the Democrats and others—that will set up an inquiry into this legislation. The inquiry will report on 7 October 2004. The legislation was passed by the House of Representatives last week. That is excellent and I congratulate the government on that initiative, but it has now been referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry.

Interestingly, the reasons for the referral of principal issues for consideration to that inquiry make it very clear in terms of the
mover of that motion and the Labor Party, who supported it, that they do not want to see the marriage bill supported. They say on the public record that they support marriage and the current common law; on the other hand, what they have done today is support the referral of this legislation to a committee. I believe that the Labor Party are trying to covertly kill off the marriage bill. On the one hand they say that they support marriage; on the other hand they also say they support overseas adoptions by same-sex couples. Frankly, in my view, that is illogical, irrational and inconsistent.

We in the government support marriage and the current commonly accepted definition of it and we do not support overseas adoptions by same-sex couples in Australia. We have signed the Hague Convention on Celebration and Recognition of the Validity of Marriages. One of the obligations placed on Australia is to recognise marriages validly entered into in foreign countries. The Attorney-General has made it clear that one of the purposes of the legislation is to say that it is the government’s view that this does not apply to same-sex marriages. Although some countries like Canada, the Netherlands, Belgium and Denmark do permit same-sex couples to marry, this is not to apply in Australia. The amendment to the Marriage Act would fix that problem. It would make it patently clear.

The Labor Party’s efforts today, supported by others, will give more time to allow this litigation to get closer and it may actually occur. Whether it is an application to the Family Court, the Federal Court or the High Court, that litigation is coming closer every day. It would enable foreign same-sex marriages to be recognised in Australia. Whether the Labor Party are doing this so it becomes an election issue, I do not know. That will depend on how the Australian people see the definition of marriage and how they accept it.

This was a covert effort by the Labor Party to refer the bill to a committee for some 14 weeks. They did not support an amendment that was put by the government. We said: ‘If you want to do this, why don’t we simply pass part of the legislation? You say you support marriage between a man and a woman. We do, and we want to have that clarified. Why don’t we pass that part and refer the other part of the legislation to a committee?’ But the Labor Party would not accept that. We proposed that the committee report in early August—I think it was 5 August—and this was not accepted.

I have expressed these concerns and I am putting them on the record tonight again. As the Attorney-General said, the amendments to the Marriage Act in this bill will make it absolutely clear that Australia will not recognise same-sex marriages entered into under the laws of another country, whatever country that may be. They will not be valid in Australia. That is exactly what we are doing with this legislation. The Attorney-General has made it clear and I am making it clear. The effort today by the Labor Party is very concerning.

According to the Attorney-General, the government has reiterated its fundamental opposition to same-sex couples adopting children. There is not only doubt about but support for such a proposition in the opposition. In the view of the vast majority of Australians, children including adopted children, according to the Attorney-General, should have the opportunity, all things being equal, to be raised by a mother and a father. I totally agree. I wish the Labor Party would do a backflip like they have on the PBS and the free trade agreement and now support the legislation. Unfortunately, that is not possible. They have made their position clear. I
believe marriage is worthy of protection. The Australian people will have their say on the Labor Party’s effort to covertly kill off this legislation.

Senate adjourned at 10.30 p.m.

DOCUMENTS

Tabling

The following government documents were considered:


Treaties—List of multilateral treaty actions under negotiation, consideration or review by the Australian Government as at June 2004.

Tabling

The following documents were tabled by the Clerk:

Military Rehabilitation and Compensation Act—

Approval of classes of payments for the purposes of paragraph 431(1)(b)—MRCA Instrument No. 7 of 2004.

Determination for providing treatment—MRCA Instrument No. 3 of 2004.

Determination of rate of interest—MRCA Instrument No. 6 of 2004.

Determination of specified rate per kilometre—MRCA Instrument No. 5 of 2004.